District of Columbia Code

1967 EDITION

TITLE 41—PARTNERSHIPS

TO

TITLE 49—COMPILATION AND CONSTRUCTION OF CODE

TABLES AND INDEX

DISTRICT OF COLUMBIA CODE

ANNOTATED

1967 EDITION

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE, RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF COLUMBIA BY REASON OF BEING GENERAL AND PERMANENT LAWS OF THE UNITED STATES), IN FORCE ON JANUARY 9, 1967

NOTES TO DECISIONS THROUGH DECEMBER 1966

VOLUME THREE

TITLE 41—PARTNERSHIPS
TO
TITLE 49—COMPILATION AND CONSTRUCTION OF CODE

TABLES AND INDEX

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* This title has been enacted as law.

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PREFACE

This is the fifth edition of the Code of Laws of the District of Columbia prepared and published pursuant to Title 1 U.S. Code, section 202. This edition contains all the general and permanent laws relating to or in force in the District of Columbia, on January 9, 1967, except such laws as are of application in the District of Columbia by reason of being laws of the United States general and permanent in their nature. The Code was originally adopted as prima facie evidence of existing law. However, Part II, Judiciary and Judicial Procedure, comprising Titles 11–17, Part III, Decedents' Estates and Fiduciary Relations, comprising Titles 18–21, and Title 28, Commercial Instruments and Transactions (containing the Uniform Commercial Code), have since been enacted as law.

Many new features and improvements were incorporated in the 1940 edition, reflecting, as far as practicable, the preferences of the users of the Code who responded to a questionnaire sent out by the Committee on Revision of the Laws to several thousand attorneys and Government officers and employees within the District of Columbia. An entirely new arrangement of subject matter was adopted.

The 1940 edition was the first official Code containing the annotations of the court decisions interpreting these laws. Numerous cross references and historical notes have been added to increase the usefulness of this Code. These annotations, cross references and historical notes are brought up to the end of 1966 in this edition and will be kept current in the future annual supplements.

The work of preparing this edition was done by the Committee on the Judiciary of the House of Representatives with the assistance of the Equity Publishing Corporation under the supervision of Dr. Charles J. Zinn, law revision counsel for the Committee. Acknowledgement is also made to the numerous officials of the District and Federal governments and the members of the bench and bar of the District whose suggestions have been most helpful.

The Committee invites all criticisms and suggestions looking to the improvement of the Code.

Emanuel Celler

Chairman.

E. E. Willis

Chairman, Subcommittee No. 3.

WASHINGTON, D.C., *January 1967*

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Chapter 1.—LIMITED PARTNERSHIPS

Sec.

41–101 to 41–131 Repealed.

§§ 41–101 to 41–109. Repealed. Sept. 28, 1962, 76 Stat. 662, Pub. L. 87–716, § 31.

Section 41–101 of act Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1498, dealt with number of partners and purposes for which limited partnerships could be formed.

Section 41–102, same act, section 1499, dealt with composition of and contributions to the partnership.

Section 41–103, same act, § 1500, specified the maximum number of special partners.

Section 41–104, same act, § 1501, dealt with liability of special partners.

Section 41–105, same act, § 1502, dealt with execution and composition of certificate.

Section 41–106, same act, § 1503, dealt with acknowledgment and recording of certificate.

Section 41–107, same act, § 1504, dealt with filing of affidavit as to contributions by special partners.

Section 41–108, same act, § 1505, provided that no partnership was formed until certificate and affidavit was filed.

Section 41–109, same act, § 1506, dealt with liability for false statements in certificate and affidavit.

§ 41–110. Repealed. June 16, 1953, 67 Stat. 62, ch. 117, § 1.

Section 41–110 of act Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1507, required publication of the terms of partnership in two newspapers.

§ 41–111. Repealed. Sept. 28, 1962, 76 Stat. 662, Pub. L. 87–716, § 31.

Section 41–111, same act § 1508, and act June 16, 1953, 67 Stat. 62, ch. 117, § 1, dealt with the effect of failure to acknowledge and record certificate.

§ 41–112. Repealed. June 16, 1953, 67 Stat. 62, ch. 117, § 1.

Section 41–112 of act Mar. 3, 1901, 31 Stat. 1416, ch. 854, § 1508, related to affidavit as to publication by creditors or publishers of newspaper.

§ 41–113 to 41–131. Repealed. Sept. 28, 1962, 76 Stat. 662, Pub. L. 87–716, § 31.

Section 41–113 of act Mar. 3, 1901, 31 Stat. 146, ch. 854, § 1510, dealt with renewal of partnerships.

Section 41–114, same act, § 1511, dealt with effect of failure to properly renew partnership.

Section 41–115, same act, § 1512, dealt with acts constituting a dissolution.

Section 41–116, same act, § 1513, provided for the effect of acts performed after dissolution.

Section 41–117, same act, § 1514, dealt with names to be used by partnership.

Section 41–118, same act, § 1515, dealt with necessary defendants in suit against partnership.

Section 41–119, same act, § 1516, dealt with effect of use of special partner's name in firm name.

Section 41–120, same act, § 1517, provided that general partners should transact the business of the partnership.

Section 41–121, same act, § 1518, dealt with the subject of withdrawal of capital contributions.

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Section 41–123, same act, § 1520, dealt with the subject of preferential assignments of partnership property.

Section 41–124, same act, § 1521, dealt with liability of special partner for violation of sections 41–122 and 41–123.

Section 41–125, same act, § 1522, provided that creditors should have preference over special partner.

Section 41–126, same act, § 1523, dealt with suits by and against the partnership.

Section 41–127, same act, § 1524, dealt with effect of joinder of special partners in suits against the partnership.

Section 41–128, same act, § 1525, dealt with new suits against special partners after recovery of judgment against general partner.

Section 41–129, same act, § 1526, provided that judgment in suits mentioned in sections 41–127 and 41–128 constituted prima facie evidence of amount due by partnerships.

Section 41–130, same act, § 1527, dealt with voluntary dissolutions.

Section 41–131, same act, § 1528, dealt with liability of general partners.

SAVINGS PROVISIONS

Sections 41–101 to 41–109, 41–111, and 41–113 to 41–131 were repealed by act of Sept. 28, 1962, except that they were continued in force as to existing limited partnerships. See section 41–429.

CROSS REFERENCE

See chapter 4, this title, for Uniform Limited Partnerships Law.

Chapter 2.—DISSOLUTION AND PAYMENT OF DEBTS

Sec.

41–201. Composition with creditors on dissolution.
41–202. Memorandum of exoneration may be furnished—Use of memorandum in evidence or to release judgment.
41–203. Other partners not discharged.
41–204. Partners' right of contribution.

§ 41–201. Composition with creditors on dissolution.

Where a partnership is dissolved, by mutual consent or otherwise, any partner may make a separate composition or compromise with any creditor of the partnership; and such a composition or compromise shall be a full and effectual discharge to the debtor who makes the same, and to him only, of and from all and every liability to the creditor with whom the same is made, according to the terms thereof. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1494.)

CROSS REFERENCE

Separate compromise by one of several joint debtors, see § 16–2106.

NOTES TO DECISIONS

Negotiable instruments

It is not within the general scope of the authority of one partner to make or endorse negotiable paper in the firm name. *Presbrey* v. *Thomas* (1893, 1 App. D.C. 171).

§ 41–202. Memorandum of exoneration may be furnished—Use of memorandum in evidence or to release judgment.

Every such debtor who makes such composition or compromise may take from the creditor with whom he makes the same a note or memorandum, in writing, exonerating him from all and every individual liability incurred by reason of his connection with the partnership, which note or memorandum may be given in evidence by such debtor, in bar of such creditor's right of recovery against him; and if such liability be by judgment, then, on the production and filing with the clerk of the notes or memorandum, the clerk shall enter the judgment as released by the plaintiff as far as the compromising debtor is concerned. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1495.)

NOTES TO DECISIONS

Discretion of commission

In public utility rate proceeding, Public Utility Commission's refusal of demand of intervening Price Administrator that thoroughgoing examination be made into rate base, rate of return, operating expenses, depreciation, and all other matters relative to establishment of fair return was not an abuse of discretion. *Washington Gas Light Co.* v. *Byrnes* (1943, 137 F. 2d 547, 78 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

Federal laws, scope of

The right conferred on Price Administrator to intervene in public utility rate proceeding does not include the power to compel the regulatory party to undertake a complete investigation against its better judgment or upon lines contrary to governing statute. *Washington Gas Light Co.* v. *Byrnes* (1943, 137 F. 2d 547, 78 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

Power to fix rates

The power to fix public utility rates is a legislative power which has been delegated by Congress to Public Utility Commission of District of Columbia, and in its exercise, within constitutional limits, discretion of commission may not be controlled even by courts. *Washington Gas Light Co.* v. *Byrnes* (1943, 137 F. 2d 547, 78 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

§ 41–203. Other partners not discharged.

Such compromise or composition with an individual member of a firm shall not be held to discharge the other partners, nor shall it impair the right of the creditor to proceed against such members of the partnership as have not been discharged; and the members of the partnership so proceeded against shall be permitted to set off any demand against the creditor which could have been set off had the suit been brought against all the individuals composing the firm. Nor shall the compromise or discharge of an individual member of a firm prevent the other members of the firm from availing themselves of any defense that would have been available had this title not been passed, except that they shall not set up the discharge of one individual as a discharge of the other partners, unless it appear that all were intended to be discharged; but the discharge of any such partner shall be deemed a payment to the creditor equal to the proportionate interest of the partner discharged in the partnership concern. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1496.)

§ 41–204. Partners' right of contribution.

Such compromise or composition of a member of a firm with a creditor of such firm shall in no wise affect the right of the other partners to call on the member who makes it for his ratable proportion of any partnership debt which they may be compelled to pay. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1497.)

Chapter 3. UNIFORM PARTNERSHIPS

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PART I

PRELIMINARY PROVISIONS

§ 41–301. Definition of terms.

In this chapter, "court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation, or profession.

"Person" includes individuals, partnerships, corporations, and other associations.

"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any law of the District of Columbia.

"Conveyance" includes every assignment, lease, mortgage, or encumbrance.

"Real property" includes land and any interest or estate in land. (Sept. 27, 1962, 76 Stat. 636, Pub. L. 87–709, § 2.)

EFFECTIVE DATE

Enacting clause preceding section 1 of act Sept. 27, 1962, Pub. L. 87–709, 76 Stat. 636, provides: "That this Act [set out as Title 41, chap. 3, herein] to provide for the formation of partnerships in the District of Columbia and to make uniform the law with respect thereto shall be in effect in the District of Columbia on and after the date of the enactment of this Act" [Sept. 27, 1962].

POPULAR NAME

Section 1 of act Sept. 27, 1962, provides that: "This Act may be cited as the 'Uniform Partnership Act'."

§ 41–302. Interpretation of knowledge and notice.

(1) A person has "knowledge" of a fact within the meaning of this chapter not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances show bad faith.

(2) A person has "notice" of a fact within the meaning of this chapter when the person who claims the benefit of the notice—

(a) states the fact to such person, or

(b) delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

(Sept. 28, 1962, 76 Stat. 636, Pub. L. 87–709, § 3.)

§ 41–303. Rules of construction.

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) The law of estoppel shall apply under this chapter.

(3) The law of agency shall apply under this chapter.

(4) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those jurisdictions which enact it.

(5) This chapter shall not be construed so as to impair the obligations of any contract existing when the chapter goes into effect, nor to affect any action or proceedings begun or right accrued before this chapter takes effect. (Sept. 27, 1962, 76 Stat. 636, Pub. L. 87–709, § 4.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–304. Rules for cases not provided for in this chapter.

In any case not provided for in this chapter the rules of law and equity, including the law merchant, shall govern. (Sept. 27, 1962, 76 Stat. 636, Pub. L. 87–709, § 5.)

PART II

NATURE OF A PARTNERSHIP

§ 41–305. Partnership defined.

(1) A partnership is an association of two or more persons to carry on as coowners a business for profit.

(2) But any association formed under any other statute of this jurisdiction, or any statute adopted by authority, other than the authority of this jurisdiction is not a partnership under this chapter, unless such association would have been a partnership in this jurisdiction prior to the adoption of this chapter; but this chapter shall apply to limited partnerships except insofar as the statutes of the District of Columbia relating to such partnerships are inconsistent herewith. (Sept. 27, 1962, 76 Stat. 637, Pub. L. 87–709, § 6.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–306. Rules for determining the existence of a partnership.

In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by section 41–316 persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment—

(a) as a debt by installments or otherwise,

(b) as wages of an employee or rent to a landlord,

(c) as an annuity to a widow or representative of a deceased partner,

(d) as interest on a loan, though the amount of payment varies with the profits of the business,

(e) as the consideration for the sale of the goodwill of a business or other property by installments or otherwise.

(Sept. 27, 1962, 76 Stat. 637, Pub. L. 87–709, § 7.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–307. Partnership property.

(1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears. (Sept. 27, 1962, 76 Stat. 637, Pub. L. 87–709, § 8.)

EFFECTIVE DATE

See note to section 41–301.

PART III

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

§ 41–308. Partner agent of partnership as to partnership business.

(1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partners so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to—

(a) assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,

(b) dispose of the goodwill of the business,

(c) do any other act which would make it impossible to carry on the ordinary business of a partnership,

(d) confess a judgment.

(e) submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction. (Sept. 27, 1962, 76 Stat. 637, Pub. L. 87–709, § 9.)

EFFECTIVE DATE

See note to section 40–301.

§ 41–309. Conveyance of real property of the partnership.

(1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partners' act binds the partnership under the provisions of paragraph (1) of section 41–308, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of section 41–308.

(3) Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of paragraph (1) of section 41–308, unless the purchaser or his assignee is a holder for value, without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of section 41–308.

(5) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property. (Sept. 27, 1962, 76 Stat. 638, Pub. L. 87–709, § 10.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–310. Partnership bound by admission of partner.

An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership. (Sept. 27, 1962, 76 Stat. 638, Pub. L. 87–709, § 11.)

§ 41–311. Partnership charged with knowledge of or notice to partner.

Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquiring while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner. (Sept. 27, 1962, 76 Stat. 638, Pub. L. 87–709, § 12.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–312. Partnership bound by partner's wrongful act.

Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is

incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act. (Sept. 27, 1962, 76 Stat. 638, Pub. L. 87–709, § 13.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–313. Partnership bound by partner's breach of trust.

The partnership is bound to make good the loss:

(a) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(b) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership. (Sept. 27, 1962, 76 Stat. 639, Pub. L. 87–709, § 14.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–314. Nature of partner's liability.

All partners are liable—

(a) jointly and severally for everything chargeable to the partnership under sections 41–312 and 41–313,

(b) jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

(Sept. 27, 1962, 76 Stat. 639, Pub. L. 87–709, § 14.)

§ 41–315. Partner by estoppel.

(1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation. (Sept. 27, 1962, 76 Stat. 639, Pub. L. 87–709, § 16.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–316. Liability of incoming partner.

A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property. (Sept. 27, 1962, 76 Stat. 639, Pub. L. 87–709, § 17.)

PART IV

RELATIONS OF PARTNERS TO ONE ANOTHER

§ 41–317. Rules determining rights and duties of partners.

The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(a) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(b) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business or for the preservation of its business or property.

(c) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

(d) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(e) All partners have equal rights in the management and conduct of the partnership business.

(f) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(g) No person can become a member of a partnership without the consent of all the partners.

(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners. (Sept. 27, 1962, 76 Stat. 639, Pub. L. 87–709, § 18.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–318. Partnership books.

The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every

partner shall at all times have access to and may inspect and copy any of them. (Sept. 27, 1962, 76 Stat. 640, Pub. L. 87–709, § 19.)

§ 41–319. Duty of partners to render information.

Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability. (Sept. 27, 1962, 76 Stat. 640, Pub. L. 87–709, § 20.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–320. Partner accountable as a fiduciary.

(1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner. (Sept. 27, 1962, 76 Stat. 640, Pub. L. 87–709, § 21.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–321. Right to an account.

Any partner shall have the right to a formal account as to partnership affairs—

(a) If he is wrongfully excluded from the partnership business or possession of its property by his copartners,

(b) If the right exists under the terms of any agreement,

(c) As provided by section 41–320.

(d) Whenever other circumstances render it just and reasonable. (Sept. 27, 1962, 76 Stat. 640, Pub. L. 87–709, § 22.)

PART V

PROPERTY RIGHTS OF A PARTNER

§ 41–322. Continuation of partnership beyond fixed term.

(1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership. (Sept. 27, 1962, 76 Stat. 640, Pub. L. 87–709, § 23.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–323. Extent of property rights of a partner.

The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management. (Sept. 27, 1962, 76 Stat. 641, Pub. L. 87–709, § 24.)

§ 41–324. Nature of a partner's right in specific partnership property.

(1) A partner is coowner with his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin.

(Sept. 27, 1962, 76 Stat. 641, Pub. L. 87–709, § 25.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–325. Nature of partner's interest in the partnership.

A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property. (Sept. 27, 1962, 76 Stat. 641, Pub. L. 87–709, § 26.)

§ 41–326. Assignment of partner's interest.

(1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's

interest and may require an account from the date only of the last account agreed to by all the partners. (Sept. 27, 1962, 76 Stat. 641, Pub. L. 87–709, § 27.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–327. Partner's interest subject to charging order.

(1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts, and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners, or

(b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership. (Sept. 27, 1962, 76 Stat. 641, Pub. L. 87–709, § 28.)

EFFECTIVE DATE

See note to section 41–301.

PART VI

DISSOLUTION AND WINDING UP

§ 41–328. Dissolution defined.

The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business. (Sept. 27, 1962, 76 Stat. 642, Pub. L. 87–709, § 29.)

§ 41–329. Partnership not terminated by dissolution.

On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed. (Sept. 27, 1962, 76 Stat. 642 Pub. L. 87–709, § 30.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–330. Causes of dissolution.

Dissolution is caused: (1) Without violation of the agreement between the partners—

(a) by the termination of the definite term or particular undertaking specified in the agreement,

(b) by the express will of any partner when no definite term or particular undertaking is specified,

(c) by the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking,

(d) by the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) By the death of any partner;

(5) By the bankruptcy of any partner or the partnership;

(6) By decree of court under section 41–331. (Sept. 27, 1962, 76 Stat. 642, Pub. L. 87–709, § 31.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–331. Dissolution by decree of court.

(1) On application by or for a partner the court shall decree a dissolution whenever—

(a) a partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind,

(b) a partner becomes in any other way incapable of performing his part of the partnership contract,

(c) a partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,

(d) a partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

(e) the business of the partnership can only be carried on at a loss,

(f) other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under sections 41–326 and 41–327—

(a) after the termination of the specified term or particular undertaking,

(b) at any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

(Sept. 27, 1962, 76 Stat. 642, Pub. L. 87–709, § 32.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–332. General effect of dissolution on authority of partner.

Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership—

(1) with respect to the partners—

(a) when the dissolution is not by the act, bankruptcy or death of a partner; or

(b) when the dissolution is by such act, bankruptcy or death of a partner, in cases where section 41–333 so requires;

(2) with respect to persons not partners, as declared in section 41–334. (Sept. 27, 1962, 76 Stat. 643, Pub. L. 87–709, § 33.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–333. Right of partner to contribution from copartners after dissolution.

Where the dissolution is caused by the act, death, or bankruptcy of a partner, each partner is liable to his copartners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless—

(a) the dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or

(b) the dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

(Sept. 27, 1962, 76 Stat. 643, Pub. L. 87–709, § 34.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–334. Power of partner to bind partnership to third persons after dissolution.

(1) After dissolution a partner can bind the partnership except as provided in paragraph (3)—

(a) by any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(b) by any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction,

(I) had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(II) though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

(2) The liability of a partner under paragraph (1)(b) shall be satisfied out of partnership assets alone when such partner has been prior to dissolution—

(a) unknown as a partner to the person with whom the contract is made; and

(b) so far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution—

(a) where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

(b) where the partner has become bankrupt; or

(c) where the partner has no authority to wind up partnership affairs; except by a transaction with one who,

(I) had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(II) had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority had not been advertised in the manner provided for advertising the fact of dissolution in paragraph (1)(b)(II).

(4) Nothing in this section shall affect the liability under section 41–315 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business. (Sept. 27, 1962, 76 Stat. 643, Pub. L. 87–709, § 35.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–335. Effect of dissolution on partner's existing liability.

(1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts. (Sept. 27, 1962, 76 Stat. 644, Pub. L. 87–709, § 36.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–336. Right to wind up.

Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs: *Provided, however,* That any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court. (Sept. 27, 1962, 76 Stat. 644, Pub. L. 87–709, § 37.)

§ 41–337. Rights of partners to application of partnership property.

(1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartner and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed,

may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under section 41–335(2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have—

(I) all the rights specified in paragraph (1) of this section, and

(II) the right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2) (a) (II) of this section, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have—

(I) if the business is not continued under the provisions of paragraph (2) (b) all the rights of a partner under paragraph (1), subject to clause (2) (a) (II) of this section,

(II) if the business is continued under paragraph (2) (b) of this section, the right as against his copartners and all claiming through them in respect of their interests in the partnership to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the goodwill of the business shall not be considered.

(Sept. 27, 1962, 76 Stat. 644, Pub. L. 87–709, § 38.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–338. Rights where partnership is dissolved for fraud or misrepresentation.

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

(a) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(b) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

(c) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership. (Sept. 27, 1962, 76 Stat. 645, Pub. L. 87–709, § 39.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–339. Rules for distribution.

In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(a) The assets of the partnership are—

(I) the partnership property,

(II) the contributions of the partners necessary for the payment of all the liabilities specified in clause (b) of this paragraph.

(b) The liabilities of the partnership shall rank in order of payment, as follows:

(I) Those owing to creditors other than partners,

(II) Those owing to partners other than for capital and profits,

(III) Those owing to partners in respect of capital,

(IV) Those owing to partners in respect of profits.

(c) The assets shall be applied in the order of their declaration in clause (a) of this paragraph to the satisfaction of the liabilities.

(d) The partners shall contribute, as provided by section 41–317(a), the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(e) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in clause (d) of this paragraph.

(f) Any partner or his legal representative shall have the right to enforce the contributions specified in clause (d) of this paragraph, to the extent of the amount which he has paid in excess of his share of the liability.

(g) The individual property of a deceased partner shall be liable for the contributions specified in clause (d) of this paragraph.

(h) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(i) Where a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order:

(I) Those owing to separate creditors.

(II) Those owing to partnership creditors,

(III) Those owing to partners by way of contribution.

(Sept. 27, 1962, 76 Stat. 646, Pub. L. 87–709, § 40.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–340. Liability of persons continuing the business in certain cases.

(1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraphs (1) and (2) of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of section 41–337(2)(b), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section, the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(9) Nothing in the section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership. (Sept. 27, 1962, 76 Stat. 646, Pub. L. 87–709, § 41.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–341. Rights of retiring or estate of deceased partner when the business is continued.

When any partner retires or dies, and the business is continued under any of the conditions set forth in section 41–340 (1), (2), (3), (5), (6), or section 41–337(2)(b), without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative, as against such persons or partnership, may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors, or the representative of the retired or deceased creditors of the dissolved partnership as against the separate partner, shall have priority on any claim arising under this section, as provided by section 41–340(8). (Sept. 27, 1962, 76 Stat. 647, Pub. L. 87–709, § 42.)

EFFECTIVE DATE

See note to section 41–301.

§ 41–342. Accrual of right to account.

The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary. (Sept. 27, 1962, 76 Stat. 648, Pub. L. 87–709, § 43.)

EFFECTIVE DATE

See note to section 41–301.

Chapter 4.—UNIFORM LIMITED PARTNERSHIPS

Sec.

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§ 41–401. Limited partnership defined.

A limited partnership is a partnership formed by two or more persons under the provisions of section 41–402, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership. (Sept. 28, 1962, 76 Stat. 655, Pub. L. 87–716, § 1.)

EFFECTIVE DATE

Enacting clause preceding section 1 act Sept. 28, 1962, provides as follows: "That this act [this chapter] to provide for the formation of limited partnerships in the District of Columbia and to make uniform the law with respect thereto, shall be in effect in the District of Columbia on and after the date of the enactment of this Act." [Sept. 28, 1962.]

POPULAR NAME

Section 27 of act Sept. 28, 1962, provides as follows: "This Act [this chapter] may be cited as the "Uniform Limited Partnership Act."

§ 41–402. Formation.

(1) Two or more persons desiring to form a limited partnership shall—

(a) sign and swear to a certificate, which shall state—

I. the name of the partnership,

II. the character of the business,

III. the location of the principal place of business,

IV. the name and place of residence of each member; general and limited partners being respectively designated,

V. the term for which the partnership is to exist,

VI. the amount of cash and a description of and the agreed value of the other property contributed by each limited partner,

VII. the additional contribution, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made,

VIII. the time, if agreed upon, when the contribution of each limited partner is to be returned,

IX. the share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution,

X. the right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution.

XI. the right, if given, of the partners to admit additional limited partners,

XII. the right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority,

XIII. the right, if given, of the remaining general partner or partners to continue the business on the death, retirement, or insanity of a general partner, and

XIV. the right, if given, of a limited partner to demand and receive property other than cash in return for his contribution;

(b) file for record the certificate in the Office of the Recorder of Deeds of the District of Columbia.

(2) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of paragraph (1). (Sept. 28, 1962, 76 Stat. 655, Pub. I. 87–716, § 2.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–403. Business which may be carried on.

A limited partnership may carry on any business which a partnership without limited partners may carry on. (Sept. 28, 1962, 76 Stat. 656, Pub. L. 87–716, § 3.)

§ 41–404. Character of limited partner's contribution.

The contributions of a limited partner may be cash or other property, but not services. (Sept. 28, 1962, 76 Stat. 656, Pub. L. 87–716, § 4.)

§ 41–405. A name not to contain surname of limited partner—Exceptions.

(1) The surname of a limited partner shall not appear in the partnership name, unless—

(a) It is also the surname of a general partner, or

(b) prior to the time when the limited partner became such the business had been carried on under a name in which his surname appeared.

(2) A limited partner whose name appears in a partnership name contrary to the provisions of paragraph (1) is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner. (Sept. 28, 1962, 76 Stat. 656, Pub. L. 87–716, § 5.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–406. Liability for false statements in certificate.

If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false—

(a) at the time he signed the certificate, or

(b) subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in section 41–425(3).

(Sept. 28, 1962, 76 Stat. 656, Pub. L. 87–716, § 6.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–407. Limited partner not liable to creditors.

A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. (Sept. 28, 1962, 76 Stat. 656, Pub. L. 87–716, § 7.)

§ 41–408. Admission of additional limited partners.

After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of section 41–425. (Sept. 28, 1962, 76 Stat. 656, Pub. L. 87–716, § 8.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–409. Rights, powers, and liabilities of a general partner.

(1) A general partner shall have all the rights and powers and be subect to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to—

(a) do any act in contravention of the certificate,

(b) do any act which would make it impossible to carry on the ordinary business of the partnership,

(c) confess a judgment against the partnership,

(d) possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose,

(e) admit a person as a general partner,

(f) admit a person as a limited partner, unless the right so to do is given in the certificate,

(g) continue the business with partnership property on the death, retirement, or insanity of a general partner, unless the right so to do is given in the certificate.

(Sept. 28, 1962, 76 Stat. 656, Pub. L. 87–716, § 9.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–410. Rights of a limited partner.

(1) A limited partner shall have the same rights as a general partner to—

(a) have the partnership books kept at a principal place of business of the partnership, and at all times to inspect and copy any of them,

(b) have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and

(c) have dissolution and winding up by decree of court.

(2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in sections 41–415 and 41–416. (Sept. 28, 1962, 76 Stat. 657, Pub. L. 87–716, § 10.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–411. Status of a person erroneously believing himself a limited partner.

A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership is not, by reason of this exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership: *Provided,* That on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income. (Sept. 28. 1962, 76 Stat. 657, Pub. L. 87–716, § 11.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–412. One person both general and limited partner.

(1) A person may be a general partner and a limited partner in the same partnership at the same time.

(2) A person who is a general, and also at the same time a limited, partner shall have all the rights and powers and be subject to all the restrictions of a general partner, except that, in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner. (Sept. 28, 1962, 76 Stat. 657, Pub. L. 87–716, § 12.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–413. Loans and other business transactions with limited partner.

(1) A limited partner also may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. No limited partner shall in respect to any such claim—

(a) receive or hold as collateral security any partnership property, or

(b) receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(2) The receiving of collateral security, or a payment, conveyance, or release in violation of the

provisions of paragraph (1) is a fraud on the creditors of the partnership. (Sept. 28, 1962, 76 Stat. 657, Pub. L. 87–716, § 13.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–414. Relation of limited partners inter se.

Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing. (Sept. 28, 1962, 76 Stat. 658, Pub. L. 87–716, § 14.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–415. Compensation of limited partner.

A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate: *Provided,* That after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners. (Sept. 28, 1962, 76 Stat. 658, Pub. L. 87–716, § 15.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–416. Withdrawal or reduction of limited partner's contribution.

(1) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until—

(a) all liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them,

(b) the consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of paragraph (2), and

(c) the certificate is canceled or so amended as to set forth the withdrawal or reduction.

(2) Subject to the provisions of paragraph (1) a limited partner may rightfully demand the return of his contribution—

(a) on the dissolution of a partnership, or

(b) when the date specified in the certificate for its return has arrived, or

(c) after he has given six months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(3) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(4) A limited partner may have the partnership dissolved and its affairs wound up when—

(a) he rightfully but unsuccessfully demands the return of his contribution, or

(b) the other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by paragraph (1a) and the limited partner would otherwise be entitled to the return of his contribution.

(Sept. 28, 1962, 76 Stat. 658, Pub. L. 87–716, § 16.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–417. Liability of limited partner to partnership.

(1) A limited partner is liable to the partnership—

(a) for the difference between his contribution as actually made and that stated in the certificate as having been made, and

(b) for any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(2) A limited partner holds as trustee for the partnership.

(a) specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and

(b) money or other property wrongfully paid or conveyed to him on account of his contribution.

(3) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(4) When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return. (Sept. 28, 1962, 76 Stat. 658, Pub. L. 87–716, § 17.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–418. Nature of limited partner's interest in partnership.

A limited partner's interest in the partnership is personal property. (Sept. 28, 1962, 76 Stat. 659, Pub. L. 87–716, § 18.)

§ 41–419. Assignment of limited partner's interest.

(1) A limited partner's interest is assignable.

(2) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

(3) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only

entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

(4) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

(5) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with section 41–425.

(6) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(7) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under sections 41–406 and 41–417. (Sept. 28, 1962, 76 Stat. 659, Pub. L. 87–716, § 19.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–420. Effect of retirement, death, or insanity of a general partner.

The retirement, death, or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners—

(a) Under a right so to do stated in the certificate, or

(b) With the consent of all members. (Sept. 28, 1962, 76 Stat. 659, Pub. L. 87–716, § 20.)

§ 41–421. Death of limited partner.

(1) On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

(2) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner. (Sept. 28, 1962, 76 Stat. 660, Pub. L. 87–716, § 21.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–422. Rights of creditors of limited partner.

(1) On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require.

(2) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(3) The remedies conferred by paragraph (1) shall not be deemed exclusive of others which may exist.

(4) Nothing in this chapter shall be held to deprive a limited partner of his statutory exemption. (Sept. 28, 1962, 76 Stat. 660, Pub. L. 87–716, § 22.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–423. Distribution of assets.

(1) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

(a) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners.

(b) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions.

(c) Those to limited partners in respect to the capital of their contributions.

(d) Those to general partners other than for capital and profits.

(e) Those to general partners in respect to profits.

(f) Those to general partners in respect to capital.

(2) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims. (Sept. 28, 1962, 76 Stat. 660, Pub. L. 87–716, § 23.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–424. When certificate shall be canceled or amended.

(1) The certificate shall be canceled when the partnership is dissolved or all limited partners cease to be such.

(2) A certificate shall be amended when—

(a) there is a change in the name of the partnership or in the amount or character of the contribution of any limited partner,

(b) a person is substituted as a limited partner,

(c) an additional limited partner is admitted,

(d) a person is admitted as a general partner,

(e) a general partner retires, dies, or becomes insane, and the business is continued under section 41–420,

(f) there is a change in the character of the business of the partnership,

(g) there is a false or erroneous statement in the certificate,

(h) there is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution,

(i) a time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate, or

(j) the members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them.

(Sept. 28, 1962, 76 Stat. 660, Pub. L. 87–716, § 24.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–425. Requirements for amendment and for cancellation of certificate.

(1) The writing to amend a certificate shall—

(a) conform to the requirements of section 41–402(1)(a) as far as necessary to set forth clearly the change in the certificate which it is desired to make, and

(b) be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(2) The writing to cancel a certificate shall be signed by all members.

(3) A person desiring the cancellation or amendment of a certificate, if any person designated in paragraphs (1) and (2) as a person who must execute the writing refuses to do so, may petition the United States District Court for the District of Columbia to direct a cancellation or amendment thereof.

(4) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the Recorder of Deeds of the District of Columbia where the certificate is recorded to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

(5) A certificate is amended or canceled when there is filed for record in the office of the Recorder of Deeds of the District of Columbia where the certificate is recorded—

(a) a writing in accordance with the provisions of paragraph (1) or (2), or

(b) a certified copy of the order of court in accordance with the provisions of paragraph (4).

(6) After the certificate is duly amended in acordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this chapter. (Sept. 28, 1962, 76 Stat. 661, Pub. L. 87–716, § 25.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–426. Parties to action.

A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership. (Sept. 28, 1962, 76 Stat. 661, Pub. L. 87–716, § 26.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–427. Rules of construction.

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those States which enact it.

(3) This chapter shall not be so construed as to impair the obligations of any contract existing when the chapter goes into effect, nor to affect any action on proceedings begun or right accrued before this chapter takes effect. (Sept. 28, 1962, 76 Stat. 662, Pub. L. 87–716, § 28.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–428. Rules for cases not provided for in this chapter.

In any case not provided for in this chapter the rules of law and equity, including the law merchant, shall govern. (Sept. 28, 1962, 76 Stat. 662, Pub. L. 87–716, § 29.)

EFFECTIVE DATE

See note to section 41–401.

§ 41–429. Provisions for existing limited partnerships.

(1) A limited partnership formed under Title 41, chapter 1, prior to the adoption of this chapter, may become a limited partnership under this chapter by complying with the provisions of section 41–402: *Provided,* That the certificate sets forth—

(a) the amount of the original contribution of each limited partner, and the time when the contribution was made, and

(b) that the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

(2) A limited partnership formed under Title 41, chapter 1, prior to the adoption of this chapter, until or unless it becomes a limited partnership under this chapter, shall continue to be governed by the provisions of sections 41–101 to 41–109, 41–111 and 41–113 to 41–131, except that such partnership shall not be renewed unless so provided in the original agreement. (Sept. 28, 1962, 76 Stat. 662, Pub. L. 87–716, § 30.)

EFFECTIVE DATE

See note to section 41–401.

TITLE 42.—PERSONAL PROPERTY

Chap. Sec.
1. Recordation of Instruments..... 42–101

Chapter 1.—RECORDATION OF INSTRUMENTS

Sec.
42–101. Repealed.
42–102. Instruments relating to chattels need not be transcribed—Instruments retained by recorder—Legal effect.
42–103. Repealed.
42–104. Void instruments—Disposal.
42–105. Repealed.
42–106. Destruction of released instruments.
42–107. False statements—Penalty.

§ 42–101. Repealed. Dec. 30, 1963, 77 Stat. 774, Pub. L. 88–243, § 15(a)(11), effective Jan. 1, 1965.

Section 546–A of act Mar. 3, 1901, 31 Stat. 1275, ch. 854, as amended, dealt with recording of bills of sale, chattel mortgages and deeds of trust. See new provisions contained in Uniform Commercial Code, set out as subtitle I in title 28.

§ 42–102. Instruments relating to chattels need not be transcribed—Instruments retained by recorder—Legal effect.

It is not necessary for the Recorder of Deeds to spread upon the records of his office the financing statements or other papers filed pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code, but they shall be indexed and, except as hereinafter provided, shall be kept on file and shall be open to inspection by the public, and shall have the same force and legal effect as if they were actually recorded in the books of his office. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 46–C, formerly § 546; Mar. 3, 1925, 43 Stat. 1103, ch. 417; renumbered and amended June 5, 1952, 66 Stat. 126, ch. 370, § 2; Dec. 30, 1963, 77 Stat. 772, Pub. L. 88–243, § 10.)

AMENDMENTS

1963—Section 10 of act Dec. 30, 1963, amended the section by striking out the words "the instruments filed pursuant to section 42–101 or section 42–103" and substituting the words "the financing statements or other papers filed pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code".

1952—Act June 5, 1952, added "filed pursuant to section 42–101 or section 42–103" following word "instruments", substituted "and, except as hereinafter provided," for "in the manner as deeds to real estate are indexed" and deleted the provision for fees for filing and indexing.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 6 of act June 5, 1952, ch. 370, 66 Stat. 128, provided: "This Act [adding § 42–104, former § 42–105, and §§ 42–106 and 42–107, and amending this section and former § 42–103 and §§ 40–711 and 45–798] shall take effect ninety days after its enactment [June 5, 1952]."

CROSS REFERENCE

Application to motor vehicle liens, § 40–702.

§ 42–103. Repealed. Dec. 30, 1963, 77 Stat. 774, Pub. L. 88–243, § 15(a)(11), effective Jan. 1, 1965.

Section 546B of act Mar. 3, 1901, 31 Stat. 1275, ch. 854, as amended, dealt with conditional sales, its validity and recordation. See new provisions in Uniform Commercial Code, set out as subtitle I in title 28.

§ 42–104. Void instruments—Disposal.

(a) Unless the Recorder of Deeds has notice of an action pending relative thereto, he may remove from the files and destroy:

(1) an instrument filed in his office pursuant to sections 42–101 and 42–103, or pursuant to sections 40–701 to 40–712, 40–713 to 40–715, which has become void or lapsed, and which has been void or lapsed for one year or more, together with any affidavit, release, assignment, or continuation or termination statement relating thereto;

(2) a lapsed financing statement, a lapsed continuation statement, a statement of assignment or release relating to either, filed pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code, and any index of any of them, one year or more after lapse of the financing statement and every continuation statement related thereto; and

(3) a termination statement filed pursuant to section 28:9–404 of the District of Columbia Code, and the index on which it is noted, one year or more after the filing of the termination statement.

(b) Subsection (a) of this section does not apply to a bill of sale, mortgage, deed of trust, conditional sale of, financing statement or security agreement covering, railroad rolling stock. (Mar. 3, 1901, ch. 854, § 546–D, as added June 5, 1952, 66 Stat. 126, ch. 370, § 3, and amended June 18, 1953, 67 Stat. 64, ch. 126, § 1; Dec. 30, 1963, 77 Stat. 772, Pub. L. 88–243, § 11.)

AMENDMENTS

1963—Section 11 of act Dec. 30, 1963, amended the section generally.

1953—Act June 18, 1953, added proviso that this section would not be applicable to any bill of sale, mortgage, deed of trust, or conditional sale of railroad rolling stock filed pursuant to section 42–101 or section 42–103.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

EFFECTIVE DATE

Section effective 90 days after June 5, 1952, see section 6 of act June 5, 1952, set out as a note under section 42–102.

§ 42–105. Repealed. Dec. 30, 1963, 77 Stat. 774, Pub. L. 88–243, § 15(a)(12), effective Jan. 1, 1965.

Section 546E of act Mar. 3, 1901, ch. 854, as added June 5, 1952, 66 Stat. 126, ch. 370, § 3, dealt with releases required to be executed by secured creditors upon payment

of debt, and the recordation thereof. See new provisions in Uniform Commercial Code, set out as subtitle I in title 28.

§ 42–106. Destruction of released instruments.

When a financing statement filed pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code has not lapsed, but all the collateral described in the financing statement has been released in the manner provided by Part 4 thereof, the Recorder of Deeds may, after the expiration of three years from the date of the filing of the statement releasing all the collateral, destroy the financing statement and each continuation statement, statement of assignment, and statement of release relating thereto. (Mar. 3, 1901, ch. 854, § 546–F, as added June 5, 1952, 66 Stat. 126, ch. 370, § 3; Dec. 30, 1963, 77 Stat. 773, Pub. L. 88–243, § 12.)

AMENDMENT

1963—Section 12 of act Dec. 30, 1963, amended the section which read as follows: "When any instrument filed pursuant to section 42–101 or section 42–103 of this chapter has not become void but has, subsequent to September 3, 1952, been released as provided in section 42–105 of this chapter, the Recorder may, after the expiration of three years from the date of filing of such release, destroy such instrument, the release and assignments relating thereto, to read as above set out."

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

EFFECTIVE DATE

Section effective 90 days after June 5, 1952, see section 6 of act June 5, 1952, set out as a note under section 42–102.

§ 42–107. False statements—Penalty.

(a) Whoever intentionally makes a false statement with respect to a financing statement or other paper filed with the Recorder of Deeds pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code, or, after receipt of payment in full of the debt secured thereby, neglects or refuses, after written demand by the debtor, to send to the debtor a termination statement as provided by section 28:9–404 of the Code, shall be fined not more than $500 or imprisoned not more than one year, or both.

(b) Prosecutions for violations of this subchapter shall be by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia.

(c) As used in subsection (b) of this section "Corporation Counsel" means the attorney for the District of Columbia, by whatever title the attorney may be designated by the Board of Commissioners of the District of Columbia. (Mar. 3, 1901, ch. 854, § 546–G, as added June 5, 1952, 66 Stat. 126, ch. 370, § 3; Dec. 30, 1963, 77 Stat. 773, Pub. L. 88–243, § 13.)

AMENDMENT

1963—Section 13 of act Dec. 30, 1963, amended the section generally.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

EFFECTIVE DATE

Section effective 90 days after June 5, 1952, see section 6 of act June 5, 1952, set out as a note under section 42–102.

TITLE 43.—PUBLIC UTILITIES

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Chapter 1.—DEFINITION OF TERMS AND APPLICATION OF LAW

Sec.
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43–123. Corporations subject to chapters 1–10 of this title.

§ 43–101. Definitions—Commission.

For the purpose of chapters 1–10 of this title the term "commission" when used herein shall mean the Public Service Commission of the District of Columbia created by chapters 1–10 of this title. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

CHANGE OF NAME

Section 21 of act, Aug. 30, 1964, Pub. L. 88–503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See section 2–2418.

§ 43–102. Commissioner.

The term "commissioner" when used in chapters 1–10 of this title shall mean one of the members of such commission. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43–103. Public utility.

The term "public utility" as used in chapters 1–10 of this title shall mean and embrace every street railroad, street railroad corporation, common carrier, gas plant, gas corporation, electric plant, electrical corporation, water power company, telephone corporation, telephone line, telegraph corporation, telegraph line, and pipe line company. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

NOTES TO DECISIONS

Automobile for hire

Owner of automobile who hires out the vehicle and his services by the hour, was not a "public utility," *Bell* v. *Harlan* (1927, 20 F. 2d 271, 57 App. D. C. 255).

§ 43–104. Service.

The term "service" is used in chapters 1–10 of this title in its broadest and most inclusive sense. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

NOTES TO DECISIONS

In general

Under the act of Congress applicable to the District of Columbia requiring public utilities to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable, the term "service" is used in its broadest and most inclusive sense. *Pollak et al.* v. *Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

§ 43–105. Corporation.

The term "corporation" when used in chapters 1–10 of this title includes a corporation, company, association, and joint-stock company or association. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43–106. Person.

The word "person" when used in chapters 1–10 of this title includes an individual and a firm or copartnership. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43–107. Joint rates.

The term "joint rates" when used in chapters 1–10 of this title with reference to street railways shall be taken to mean rates between unrelated lines in effect on March 4, 1913, under then existing law or under contract, or which may thereafter be specifically authorized by law. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43–108. Extension or extensions.

The term "extension or extensions" when used in chapters 1–10 of this title shall include the reasonable extension of the service and facilities of every

street railroad, street railroad corporation, gas plant, gas corporation, electric plant, electrical corporation, telephone corporation, telephone line, telegraph line, and telegraph corporation as the same are defined in chapters 1–10 of this title. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43–109. Street railroad.

The term "street railroad" when used in chapters 1–10 of this title includes every such railroad, whether wholly or partly in the District of Columbia, by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for compensation, and includes all equipment, construction, maintenance, repairs, switches, spurs, tracks, terminals, terminal facilities of every kind, trackage, joint or reciprocal trackage, transfers of passengers between street railways having connecting lines and street railways having independent lines, subways, tunnels, and stations, used, operated, or owned by or in connection with any such street railroad, and all the property of the same used in the conduct of its business. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

§ 43–110. Street railroad corporation.

The term "street railroad corporation" when used in chapters 1–10 of this title includes every corporation, company, association, joint-stock company or association, partnership, and person doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any street railroad or any cars or other equipment used thereon or in connection therewith. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

§ 43–111. Common carrier—Exempt organizations.

The term "common carrier" when used in chapters 1–10 of this title includes express companies and every corporation, street railroad corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any agency or agencies for public use for the conveyance of persons or property within the District of Columbia for hire. Steam railroads, express companies subject to the jurisdiction of the Interstate Commerce Commission, the Washington Terminal Company, and the Norfolk and Washington Steamboat Company, and all companies engaged in interstate traffic upon the Potomac River and Chesapeake Bay and the Washington and Old Dominion Railway, excepting as to the regulation of its operation inside of the District of Columbia, and the Washington-Virginia Railway Company, excepting as to the regulation of its operation inside of the District of Columbia, are excluded from the operation of chapters 1–10 of this title, and are not included in the term "common carrier." (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1; Feb. 25, 1916, 39 Stat. 13, ch. 34; Aug. 21, 1916, 39 Stat. 521, ch. 367; Aug. 26, 1916, 39 Stat. 536, ch. 412.)

AMENDMENTS

1916—Act Aug. 26, 1916, added all begining with "and the Washington-Virginia Old Dominion" and ending with "District of Columbia."

Act Aug. 21, 1916, added the following: "express companies subject to the jurisdiction of the Interstate Commerce Commission."

Act Feb. 25, 1916, added the following: "and the Washington and Old Dominion Railway, excepting as to the regulation of its operation inside of the District of Columbia."

NOTES TO DECISIONS

Emergency price control act

One who owned and rented taxicabs to others for operation in the District of Columbia was a "common carrier" within this section and was entitled, under provision of former Emergency Price Control Act, former section 942(c) of title 50, U. S. Code App., to exemption from price control, though rentals which he charged were not actually controlled by Public Utilities Commission. *In re Rice* (1948, 165 F. 2d 617, 83 U. S. App. D. C. 26).

Ownership

Under this section providing that term "common carrier" includes every person owning, operating, controlling, or managing any agencies for public use for conveyance of persons or property within the District of Columbia for hire, any person who owns such facilities, regardless of whether he personally operates them, is a "common carrier" subject to regulation by Public Utilities Commission of the District. *In re Rice* (1948, 165 F. 2d 617, 83 U. S. App. D. C. 26).

Taxicab company

A taxicab company is a common carrier within this act and subject to the jurisdiction of the Public Utilities Commission. *Terminal Taxicab Co.* v. *Kutz* (1916, 36 S. Ct. 583, 241 U.S. 252, 60 L. Ed. 984).

§ 43–112. Gas plant.

The term "gas plant" when used in chapters 1–10 of this title includes all buildings, easements, real estate, mains, pipes, conduits, service pipes, services, pipe galleries, meters, boilers, water-gas sets, retorts, fixtures, condensers, scrubbers, purifiers, holders, materials, apparatus, personal property, and franchises, and property of every kind used in the conduct of the business operated, owned, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale, or furnishing of gas (natural or manufactured) for light, heat, or power. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

§ 43–113. Gas corporation.

The term "gas corporation" when used in chapters 1–10 of this title includes every corporation, company, association, joint-stock company or association, partnership, or person manufacturing, making, distributing, or selling gas for light, heat, or power, or for any public use whatsoever in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, and in said district owning, operating, controlling, or managing any gas plant, except where the gas is made or produced and distributed by the maker on or through private property solely for its own use or the use of its tenants and not for sale to or for the use of others. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

§ 43–114. Electric plant.

The term "electric plant" when used in chapters 1–10 of this title includes all engines, boilers, dynamos, generators, storage batteries, converters, motors, transformers, cables, wires, poles, lamps, meters,

easements, real estate, fixtures, and personal property, materials, apparatus, and devices of every kind operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale, or furnishing of electricity for light, heat, or power, and any conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying electrical conductors used or to be used wholly or in part for the transmission of electricity for light, heat, or power, except where electricity is made, generated, produced, or transmitted by a private person or private corporation on or through private property solely for its own use or the use of tenants of its building and not for sale to or for the use of others. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1.)

§ 43–115. Electrical corporation.

The term "electrical corporation" when used in chapters 1–10 of this title includes every corporation, company, association, joint-stock company or association, partnership, or person doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any electric plant, including any water plant, or water property, or water falls, or dam, or water-power stations, except where electricity is made, generated, produced, or transmitted by a private person or private corporation on or through private property solely for its own use or the use of tenants of its building and not for sale to or for the use of others. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43–116. Water-power company.

The term "water-power company" when used in chapters 1–10 of this title includes every corporation, company, association, joint-stock company or association, partnership and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, managing, or controlling any plant or property, dam or water supply, canal, or power station for the development of water power for the generation of electrical current or other power or for the distribution or sale of such electrical current or other power. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43–117. Telephone corporation.

The term "telephone corporation" when used in chapters 1–10 of this title includes every corporation, company, association, joint-stock company or association, partnership, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any plant, wires, poles for the reception, transmission, or communication of messages by telephone, telephonic apparatus or instruments, or any telephone line or part of telephone line, used in the conduct of the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication for hire. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43–118. Telephone line.

The term "telephone line" when used in chapters 1–10 of this title includes conduits, ducts, poles, wires, cables, cross arms, receivers, transmitters, instruments, machines, and appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, appurtenances, and routes used, operated, controlled, or owned by any telephone corporation to facilitate the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43–119. Telegraph corporation.

The term "telegraph corporation" when used in chapters 1–10 of this title includes every corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any plant, wires, poles, or property for the purposes of communication, or of transmitting or receiving messages by telegraph, or by any telegraphic apparatus or instrument, or any telegraph line or part of telegraph line used in the conduct of the business of affording for hire, communication by telegraph, or which licenses, lets, or permits telegraphic communication for hire. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43–120. Telegraph line.

The term "telegraph line" when used in chapters 1–10 of this title includes conduits, ducts, poles, wires, cables, cross-arms, instruments, machinery, appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, and routes used, operated, controlled, or owned by any telegraph corporation to facilitate the business of affording communication by telegraph for hire. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43–121. Pipe-line company.

The term "pipe-line company" when used in chapters 1–10 of this title includes every corporation, company, association, joint-stock company or association, partnership, or person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, managing, or controlling the supply of any liquid, steam, or air through pipes or tubing to consumers for use or for lighting, heating, or cooling purposes, or for power. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1.)

§ 43–122. Chapters 1–10 of this title applicable to transportation of passengers, freight, or property within the District of Columbia—Construction in connection with Constitution and interstate commerce laws.

Chapters 1–10 of this title shall apply to the transportation of passengers, freight, or property from one point to another within the District of Columbia, and any common carrier performing such service; and chapters 1–10 of this title shall be so applicable and be so construed as to be free from conflict with those provisions of the Constitution of the United States and the laws in pursuance thereof relating to interstate commerce. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 1.)

NOTES TO DECISIONS

Garage business

A taxicab company which has the exclusive right to taxicab passengers from the Washington terminal, and

the exclusive right to the taxicab business out from certain hotels, is to this extent, under the jurisdiction of the Public Utilities Commission, but the Commission has no jurisdiction over its garage business, or rates charged on such business. *Terminal Taxicab Co.* v. *Kutz* (1916, 36 S. Ct. 583, 241 U. S. 252, 60 L. Ed. 984).

Single operator

An operator of a single passenger sedan is not a public utility and does not come under the jurisdiction of an order of Public Utilities Commission requiring financial protection of his patrons. *Bell* v. *Harlan* (1927, 20 F. 2d 271, 57 App. D. C. 255).

§ 43–123. Corporations subject to chapters 1–10 of this title.

Corporations formed to acquire property or to transact business which would be subject to the provisions of chapters 1–10 of this title, and corporations possessing franchises for any of the purposes contemplated by chapters 1–10 of this title shall be deemed to be subject to the provisions of chapters 1–10 of this title, although no property may have been acquired, business transacted, or franchises exercised. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 1.)

Chapter 2.—CREATION OF PUBLIC SERVICE COMMISSION—MEMBERS—COUNSEL—EMPLOYEES

Sec.

43–201. Members—Eligibility of Commissioners—Oath.
43–202. Quorum—Investigations, inquiries, may be undertaken by any Commissioner.
43–203. Acts of prior Commission validated.
43–204. Corporation counsel as counsel of Commission—Duties—Additional compensation—Employment of additional counsel—Enforcement of orders.
43–205. People's counsel—Duties, term of office, salary, qualifications.
43–206. Employees—Compensation—Expenses—Expenditures.
43–207. Power withdrawn from Interstate Commerce Commission—Rules and regulations of said Commission to remain in force.
43–208. Orders as to repairs—Improvement in equipment, service.
43–209. Authority of District of Columbia Commissioners to continue—Ordinances and regulations to remain in force until modified by the Public Service Commission.

§ 43–201. Members—Eligibility of Commissioners—Oath.

The Public Service Commission of the District of Columbia shall be composed of three commissioners as follows: (1) The Engineer Commissioner of the District of Columbia, and (2) two persons appointed by the President, by and with the advice and consent of the Senate. Each of the appointed commissioners shall receive a salary at the rate of $7,500 per annum. Of the two commissioners first appointed after December 15, 1926, one shall be appointed for a term of two years, and one for a term of three years, commencing July 1, 1926. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. The commission shall at least biennially elect a chairman by a majority vote of its members. No commissioner, other than the said Engineer Commissioner of the District of Columbia, shall, during his term of office, hold any other public office. The commissioners of the District of Columbia shall furnish the Public Service Commission with suitable offices and quarters. No person, other than the said Engineer Commissioner of the District of Columbia, shall be eligible to the office of commissioner of the Public Service Commission who has not been a bona fide resident of the District of Columbia for a period of at least three years next preceding his appointment or who has voted or claimed residence elsewhere during such period. No person shall be eligible to the office of commissioner of said Public Service Commission who is, or who shall have been during a period of five years next preceding his appointment, directly or indirectly interested in any public utility operating, owning, or having an interest in property in the District of Columbia; or in any stock, bond, mortgage, security, or contract of any such public utility. If any such commissioner shall voluntarily become so interested, his office shall ipso facto become vacant; and if any such commissioner shall become so interested otherwise than voluntarily he shall, within a reasonable time, divest himself of such interest, and if he fails to do so his office shall become vacant. Before entering upon the duties of his office each commissioner, the secretary of the commission, the counsel of the commission and every employee of said commission shall take and subscribe the constitutional oath of office, and shall in addition thereto make oath or affirmation before and file with the clerk of the United States District Court for the District of Columbia that he is not pecuniarily interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 97(a); Dec. 15, 1926, 44 Stat. 920, ch. 8, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

AMENDMENT

1926—Act Dec. 15, 1926, amended section generally, and among other changes, provided for a Public Utilities Commission composed of the Engineer Commissioner of the District and two commissioners appointed by the President, made provisions for the filling of vacancies on the commission, the biennial election of a chairman by majority vote, and for suitable offices and quarters, fixed the salaries of the appointed members and staggered their terms of office, prohibited the holding of any other public office by the appointees, and prescribed the qualifications for membership on the commission.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Section 21 of act, Aug. 30, 1964, Pub. L. 88–503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See section 2–2418.

CROSS REFERENCES

Constitutionality of act, see § 43–1003.
Liberal construction of act, see § 43–1003.
Saving clause; laws, orders, rules and regulations prior to this act; proceedings pending, see §§ 43–1005, 43–1006.

NOTES TO DECISIONS

Utility companies

The Public Utilities Commission of the District of Columbia is the special agency created to perform in the first instance the relevant regulatory functions over public utility companies within its jurisdiction, and it may make orders, subject to court review, to carry out its decisions. *Public Utilities Commission of District of Columbia* v. *Capital Transit Co. et al.* (1954, 214 F. 2d 242, 94 U. S. App. D. C. 140).

§ 43-202. Quorum—Investigations, inquiries, may be undertaken by any Commissioner.

A majority of the commissioners shall constitute a quorum to do business, and any vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the commission. Any investigation, inquiry, or hearing within the powers of the commission may be made or held by any commissioner, whose acts and orders, when approved by the commission, shall be deemed to be the order of the commission. The commission shall have power to adopt and publish rules and regulations for the administration of the provisions of chapters 1–10 of this title, including the conduct of its investigations, inquiries, hearings, and other proceedings. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 97(b); Dec. 15, 1926, 44 Stat. 921, ch. 8, § 1.)

AMENDMENT

1926—Act Dec. 15, 1926, deleted "to govern its proceedings and to regulate the mode and manner of all investigations and hearings pertaining to public utilities" following the word "rules" in the last sentence, and substituted in lieu thereof "and regulations for the administration of the provisions of chapters 1–10 of this title, including the conduct of its investigations, inquiries, hearings, and other proceedings."

CROSS REFERENCES

Investigation of injuries or deaths occurring in the operation of a utility company, see § 43–1001.

Jurisdiction and control over street railroads and bus lines, see § 44–201 et seq.

Powers over motor carriers; liability insurance or bond required, see § 44–301.

Prosecution of violations of rules and regulations, see §§ 43–906 to 43–908.

Recommendations of changes in utility laws, see § 43–304.

Rules and regulations by Commissioners of the District, see § 43–209.

Rules and regulations for street car fenders, see § 44–204.

Rules and regulations for testing gas and electric meters, see § 43–603.

Rules and regulations for testing meters and measuring devices, see § 43–320.

Rules and regulations generally, see § 1–226.

Rules and regulations governing proceedings, investigations, inspections, tests, audits, and hearings before the Commission, see §43–402.

Rules and regulations governing sliding scale of rates and dividends, see § 43–317.

Rules and regulations of Interstate Commerce Commission, see § 43–207.

Rules, regulations, and forms for accounts of new construction, see § 43–316.

Rules, regulations, and forms for computing depreciation, see § 43–315.

NOTES TO DECISIONS

Administrative agency

Congress of the United States exercises exclusive legislative powers within the District of Columbia, and the Public Utilities Commission is merely an administrative agency. *Patrick* v. *Smith* (1931, 45 F. 2d 924, 60 App. D. C. 6).

Jurisdiction

Utility companies operating under public franchises and having monopolistic characteristics are subject to special regulations, and cases involving utility's operations are not governed by the ordinary rules applicable to judicial interference in the conduct of a business enterprise. *Public Utilities Commission of District of Columbia* v. *Capital Transit Co. et al.* (1954, 214 F. 2d 242, 94 U. S. App. D. C. 140).

Where transit company for the District of Columbia installed radio loudspeakers in its vehicles for radio broadcasts of music and commercial announcements, and on protest of passengers the Public Utilities Commission ordere an investigation and dismissed the investigation by final order which was appealed to the District Court which dismissed the petitions of the passengers on the grounds that no legal rights had been invaded, jurisdiction of the Commission and the District Court was present. *Pollak et al.* v. *Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D.C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

§ 43-203. Acts of prior Commission validated.

Sections 43–201 to 43–203 shall not be construed (1) to invalidate any subpœna, valuation, order, rule, regulation, or revocation, or any rescission, alteration, modification, amendment, or suspension thereof issued by the commission prior to the date on which the commissioners first appointed under section 43–201 take office; or (2) to invalidate any complaint served, or any investigation, inquiry, or hearing held or commenced, or any determination, or decision rendered by the commission prior to such date; or (3) to invalidate, abate, or discontinue any action, suit, trial, or proceeding commenced by or against such commission prior to such date. (Dec. 15. 1926, 44 Stat. 921, ch. 8, § 2.)

CROSS REFERENCE

Other provisions for saving clause for laws, orders, rules, and regulations, and pending proceedings, see §§ 43–1005, 43–1006.

§ 43-204. Corporation counsel as counsel of Commission—Duties—Additional compensation—Employment of additional counsel—Enforcement of orders.

The corporation counsel of the District of Columbia shall be the general counsel of the commission and shall receive from and be paid out of the appropriations provided and to be provided for the expenses of the commission in addition to his compensation otherwise provided by law the sum of $1,000 per annum, payable in equal monthly installments. It shall be the duty of the general counsel to represent and appear for the commission in all actions and proceedings involving any question under chapters 1–10 of this title, or under or in reference to any act, order, or proceeding of the commission, and if directed to do so by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence and prosecute all actions and proceedings directed or authorized by the commission, and to expedite, in every way possible, final and just determination of all such actions and proceedings; to advise the commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the commission and of the members thereof, and generally to perform all

duties and services as attorney and counsel to the commission which the commission may reasonably require of him. The assistants to the corporation counsel shall perform such duties relating to matters arising under chapters 1–10 of this title and all other matters as the corporation counsel may prescribe. The commission may, if at any time it deems necessary, employ other attorneys at law as additional assistants to the said general counsel for the performance of such extraordinary legal services for or in behalf of the commission at such special compensation for such additional assistants as the commission may prescribe, which said compensation shall be paid out of the appropriations provided for the expenses of the commission. The said corporation counsel and any of his assistants designated by him or by the commission shall have the right to appear and prosecute any civil, quasi criminal, or criminal case to recover any penalty, forfeiture, fine, or for the imposition of any punishment provided for in chapters 1–10 of this title whether instituted by or on behalf of the United States of America or by or on behalf of the District of Columbia or otherwise, and on every appeal provided by law. The commission may enforce its orders in any case by mandamus or other legal or equitable remedy in any court of competent jurisdiction, and it shall be the duty of the corporation counsel or his assistants to represent the commission in every such proceeding. (Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 91.)

NOTES TO DECISIONS

Injunction

Where it appeared that District of Columbia Public Utilities Commission, in determining whether transit company's depreciation reserve was adequate, might find it necessary to issue an order, which would be subject to judicial review, directing withdrawal of amount from earned surplus, but corporation proposed to pay a dividend from earned surplus, preliminary injunction would be issued restraining corporation from paying proposed dividend pending determination of adequacy of reserve. *Public Utilities Commission of District of Columbia* v. *Capital Transit Co. et al.* (1954, 214 F. 2d 242, 94 U. S. App. D. C. 140).

Where it did not appear that there was a substantial likelihood that Public Utilities Commission of the District of Columbia, after investigation of transit company's financial condition, would be able to conclude that proposed retirement of bond issue would so handicap the company as to require the cancellation or modification of retirement program, Commission was not entitled to preliminary injunction restraining retirement pending investigation. *Id.*

§ 43–205. People's counsel—Duties, term of office, salary, qualifications.

CODIFICATION

Section, act Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 91A, as added Dec. 15, 1926, 44 Stat. 921, ch. 8, § 3, provided for a people's counsel appointed by the President by and with the advice and consent of the Senate.

The office, created by act Dec. 15, 1926, to represent and appear for the people of the District at hearings of the Public Utility Commission or in judicial proceedings in matters concerning service furnished by public utilities, to represent petitioners before the commission in complaints as to rates and service, and to investigate service, rates charged, and valuation of properties of utilities, was abolished by 1952 Reorg. Plan No. 5, § 2(b), 66 Stat. 824, set out in Appendix to Title 1, Administration.

§ 43–206. Employees—Compensation—Expenses — Expenditures.

The commission shall have the power in each and every instance to employ and to prescribe the duties of such officers, clerks, stenographers, typewriters, inspectors, experts, and employees as it may deem necessary to carry out the provisions of chapters 1–10 of this title, and to fix and pay their compensation within the appropriations provided by Congress. The commission is hereby authorized, within the apppropriation made by Congress, to incur and pay incidental expenses for postage, printing, blanks, books, law books, books of reference, and periodicals, stationery, binding, rebinding, repairing and preservation of records, desks, office furniture and supplies, traveling expenses of the commission, the commissioners, and every officer, agent, and employee thereof, and all other general expenses reasonably necessary to be incurred in carrying out the purposes of chapters 1–10 of this title. All payments and disbursements, as provided in chapters 1–10 of this title, shall be made by the disbursing officer of the District of Columbia upon proper vouchers, certified as required by the commission; and the commission is hereby also granted power and authority to designate and appoint during its pleasure such officers, clerks, inspectors, and employees of the District of Columbia and members of the Metropolitan police force of the District of Columbia to perform any of the duties which the commission may from time to time, respectively, assign to them, and to employ any assistance within the limits of the appropriations for its use made by Act of Congress. (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 95.)

§ 43–207. Power withdrawn from Interstate Commerce Commission—Rules and regulations of said Commission to remain in force.

The authority vested by law in the Interstate Commerce Commission by virtue and under the Act of Congress, approved May 23, 1908, entitled "An Act authorizing certain extensions to be made in the lines of the Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Railway of Washington, and the Capital Traction Company, in the District of Columbia and for other purposes" shall no longer be exercised by the Interstate Commerce Commission: *Provided,* That the orders, rules, and regulations made by the Interstate Commerce Commission shall continue to be in force until changed, repealed, altered, or amended by the commission created by chapters 1–10 of this title, which said commission is hereby given power and jurisdiction to issue and, at its pleasure, to revoke all permits, or licenses, to carry chapters 1–10 of this title into effect, and its rules and regulations shall be valid and binding on all public-service corporations and on all persons. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96.)

REFERENCES IN TEXT

Act May 23, 1908, referred to in text, is classified to §§ 44–202, 44–203, 44–206, and 44–207.

CROSS REFERENCE

Rules and regulations generally, see § 43–202.

§ 43–208. Orders as to repairs—Improvement in equipment, service.

Whenever the commission shall be of opinion, after hearing had upon its own motion or upon complaint, that repairs, improvements, or changes in any street railroad, gas plant, electric plant, telephone line, telegraph line, pipe line, water-power plant, or the facilities of any common carrier ought reasonably to be made, or that any addition of service or equipment ought reasonably to be made thereto, or that the vehicles or cars of any street railroad or common carrier are unclean, insanitary, uncomfortable, inconvenient, or improperly equipped, operated, or maintained, or are in need of paint, or unsightly in appearance, or that any addition ought reasonably to be made thereto, in order to promote the comfort or convenience of the public or employees, or in order to secure adequate service or facilities, the commission shall have power to make and serve an order directing that such repairs, improvements, changes, or additions to service or equipment be made within a reasonable time and in a manner to be specified therein, and every such public utility is hereby required and directed to obey every such order of the commission. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96.)

CROSS REFERENCES

New construction, see § 43–316.

Other provisions concerning care, maintenance, and repair of street cars, see § 44–202 et seq.

NOTES TO DECISIONS

Bus lines

Under statutory provision that Capital Transit Company should succeed to property rights and franchises of Capital Traction and Washington Railway Electric Company, subject to right of Public Utilities Commission to order reasonable extension or reasonable abandonment of tracks and facilities, word "facilities" includes buses, and right of Commission to order reasonable extension is not limited to extension of tracks. *Washington, Marlboro & Annapolis Motor Lines Inc.* v. *Public Utilities Commission of District of Columbia* (D.C.D.C. 1953, 114 F. Supp. 321).

Street-car vestibules

This act did not impliedly repeal act March 3, 1905 (§ 44–205), requiring glass vestibules. *Washington R. & Elec. Co.* v. *District of Columbia* (1926, 10 F. 2d 999, 56 App. D. C. 134).

§ 43–209. Authority of District of Columbia Commissioners to continue—Ordinances and regulations to remain in force until modified by the Public Service Commission.

All the duties, powers, and authority of the Commissioners of the District of Columbia shall continue and remain in full force and effect notwithstanding chapters 1–10 of this title; and all powers, authority and duties of the municipality known as the District of Columbia and all rights vested in said municipality shall continue and remain in full force and effect notwithstanding chapters 1–10 of this title. All the lawful ordinances and regulations made by the Commissioners of the District of Columbia as such, and all other lawful municipal ordinances and regulations, shall continue and remain in full force and effect, and may be altered, changed, or amended, and new ordinances and regulations may be made by the commissioners of the District of Columbia, acting as such, hereafter, notwithstanding chapters 1–10 of this title: *Provided,* That when any order of the Commission created by chapters 1–10 of this title shall be made which shall be inconsistent and repugnant to any municipal ordinance or regulation, or any ordinance or regulation made or to be made by the Commissioners of the District of Columbia, acting as such, then and in such event the order of the Commission created by chapters 1–10 of this title shall be given full force and effect, notwithstanding such municipal ordinance or regulation. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 99.)

CROSS REFERENCES

Power of Commissioner to fix fares charged by public conveyances, see §§ 1–223, 1–224.

Rules and regulations generally, see § 43–202.

Traffic regulations by joint board composed of Commissioners of the District and the Public Service Commission, see § 40–603.

Chapter 3.—SERVICE, VALUATION, ACCOUNTS

Sec.

43–301. Public utilities—Service and facilities—Charges to be reasonable, just, and nondiscriminatory—To obey orders of Commission.

43–302. Use of equipment of other companies—Application to Commission to require such use in event of disagreement.

43–303. Commission to compel compliance with chapters 1–10 of this title, with laws, ordinances, and charter—Criminal liability continued.

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43–305. Commission to ascertain cost of construction, replacement value, outstanding stock—Information to be printed in annual report.

43–306. Property to be valued as of time of evaluation.

43–307. Valuation—Notice and hearing—Statement of valuation to be filed.

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43–312. Utilities to have office in the District of Columbia—Books and records of utilities not to be removed from the District of Columbia—Records may be kept at general office of utility.

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43–319. Annual report of Commission.

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43–323. Schedule of rates to be filed—Existing rates to remain in force until changed.

43–324. Rules and regulations affecting rates to be filed.

43–325. Copy of rate schedule to be available for public inspection.

43–326. Schedule of joint rates to be filed.

43–327. Change in schedule—Notice.

43–328. New schedules to be filed.

Sec.
43–329. Utility not to receive greater or less compensation than fixed in schedule.
43–330. Commission may prescribe changes in form of schedule.

§ 43–301. Public utilities—Service and facilities—Charges to be reasonable, just, and nondiscriminatory—To obey orders of Commission.

Every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminatory charge for such facility or service is prohibited and is hereby declared unlawful. Every public utility is hereby required to obey the lawful orders of the commission created by chapters 1–10 of this title. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 2.)

Cross References

Constitutionality of act, see § 43–1003.

Criminal penalties for failure to obey laws or rules, regulations or orders of Commission, see §§ 43–906 to 43–908.

Illegal rates of electric power companies, see § 43–1107.

Liberal construction of act, see § 43–1003.

Power to alter unreasonable or discriminatory rate, regulation, or practice, see § 43–911.

Provisions concerning discriminatory rates, see §§ 43–329, 43–902 to 43–904.

Saving clauses for previous laws, orders, rules and regulations, and pending proceedings, see § 43–203.

NOTES TO DECISIONS

Determination of rate base—Generally

Where power company served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, use by Public Utility Commission of District of Columbia of power company's system-wide revenues and revenue needs as part of process of reaching approved rate for District of Columbia was proper. *Capital Transit Co.* v. *Public Utilities Commission et al.* (1954, 213 F. 2d 176, 93 U. S. App. D. C. 194, certiorari denied 75 S. Ct. 25, 348 U. S. 816, 99 L. Ed. 643).

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U. S. App. D. C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

If gas rates are to be granted for emergency purposes in a summary proceeding before the District of Columbia Public Utilities Commission, provision should be made for adjustment of subsequent rates, as under the sliding scale arrangement, if upon a statutory full rate hearing it should be found that the emergency rates had produced either excessive or inadequate returns. *Id.*

The composition of gas rate base is within province of District of Columbia Public Utilities Commission, and commission can adopt any method of valuation so long as end result of rate order is not unjust and unreasonable and can even use a method of calculating rates other than the traditional one which depends on the finding of a rate base. *Id.*

District of Columbia Public Utilities Commission not inquiring into issues necessary to determination of fair rate of return in gas rate proceeding could not rely on finding in some prior rate proceeding that six per cent was fair rate of return, where risk factor had been materially reduced in recent years and pertinent local conditions and economic factors had not remained static. *Id.*

Gas company's expenditure for adapting customer's appliances to natural gas to permit changeover from manufactured to natural gas is a proper item of expense currently deductible from operating revenues for rate purposes and can be treated as a deferred expense allocable over period of future years. *Id.*

The inclusion of items in gas rate base must meet the test of justness and reasonableness to the consumer as well as to the investor. *Id.*

Under reproduction cost theory, it is unreasonable to burden public with gas rates based on cost of obsolete and abandoned property which no one will conceivably think of reproducing. *Id.*

—— Prudent investment theory of return

The District of Columbia Public Utilities Commission's statement that return of less than four per cent was inadequate to maintain gas company in sound financial condition was insufficient to support commission's conclusion that gas rates were reasonable, just and nondiscriminatory, where the commission adopted prudent investment theory of rate regulation but did not subject issue of rate of return to inquiry at the hearing. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U. S. App. D. C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

Whether gas company's expenditure for adapting customer's appliances to natural gas to permit changeover from manufactured to natural gas should be considered a prudent investment includible in the rate base is a matter for the District of Columbia Public Utilities Commission. *Id.*

In gas rate proceeding, whether risk of obsolescence has been borne by the investor in the past and whether he has been compensated for such risk is an inquiry which must be made in the first instance by the District of Columbia Public Utilities Commission. *Id.*

District of Columbia Public Utilities Commission awarding higher gas rates because of past inequities to investors must support the factual premise by evidence in the record, and if the factual premise that past earnings were not sufficient to compensate investors for inadequate depreciation charges is true the commission can properly require the burden to be borne by consumers or to be shared by investors and consumers depending upon the circumstances. *Id.*

Where conversion to natural gas makes retirement of gas manufacturing plant imminent, District of Columbia Public Utilities Commission, in order to depreciate plant at accelerated pace for gas rate purposes, must determine whether investors have already been compensated for the risk that annual depreciation charges would prove inadequate at time of retirement because of obsolescence. *Id.*

If District of Columbia Public Utilities Commission includes abandoned property in gas rate base, protection of consumer interest requires that such treatment of abandoned property be offset in the rate of return. *Id.*

In gas rate proceeding, compensation to investors for risk of obsolescence may be made either through inclusion of obsolescence as one of the elements used in calculating depreciation expense or as risk considered in fixing the permissible rate of return, so if in the past the risk of obsolescence was so provided for, abandoned property should not be included in the rate base. *Id.*

The prudent investment theory of gas rate base valuation contemplates that rates will enable investor to maintain his original prudent investment intact until it is recovered through annual charges to depreciation expense reflected in a depreciation reserve, and if a unit of property resulting from prudent investment becomes obsolete before it has been recovered in full by the investor it is not necessarily erroneous as a matter of law for the commission to include such property in the rate base until such recovery has occurred, and such a course may be necessary to assure efficiency and progress in the art and continued attraction of capital to the enterprise. *Id.*

The prudent investment theory of gas rate regulation requires determination by District of Columbia Public Utilities Commission of the rate base and of a rate of return on that rate base sufficient to produce adequate revenues above operating expenses, including deprecia-

tion, to pay interest on bonds, dividends on stock and maintain financial integrity of the enterprise, and it is essential to inquiry on fair rate of return that there be a study of capital costs of the business, such as service on debt and dividends on stock, in light of returns on other investments in other enterprises having similar risk factor. *Id.*

Gas rates

Commission is without power to fix rates at which gas piped from another State will be supplied to local distributing company. *Galloway* v. *Bell* (1926, 11 F. 2d 558, 56 App. D. C. 172).

Injunctive relief

Where telephone company, operating in the District, received a letter from U. S. attorney requesting company to discontinue service because phone was used in violation of District gambling statute, an injunction against the United States attorney would be improper because his action was that of the United States. *Fay* v. *Miller* (1950, 183 F. 2d 986, 87 U. S. App. D. C. 168).

Jurisdiction

Where transit company for the District of Columbia installed radio loudspeakers in its vehicles for radio broadcasts of music and commercial announcements, and on protest of passengers the Public Utilities Commission ordered an investigation and dismissed the investigation by final order which was appealed to the District Court which dismissed the petitions of the passengers on the grounds that no legal rights had been invaded, jurisdiction of the Commission and the District Court was present. *Pollak et al.* v. *Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

Previously established rates

The legality of past rates cannot be challenged in a gas rate proceeding, and past excessive earnings belong to the gas company and past losses must be borne by the company. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U. S. App. D. C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

Right to compel furnishing service

Appellant has no positive right to compel the power company to furnish service to him contrary to its own rules and regulations duly approved by the Commission, and the company's right to suspend or discontinue the service in accordance with its notice can neither be controlled nor restrained. *Lewis* v. *Potomac Elec. Power Co.* (1933, 64 F. 2d 701, 62 App. D. C. 63).

Service

Under the act of Congress applicable to the District of Columbia requiring public utilities to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable, the term "service" is used in its broadest and most inclusive sense. *Pollak et al.* v. *Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

System rates

Where power company served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, and system-wide method was pursued in determining rates for District of Columbia consumers, such rates would have to be reasonable, just, and nondiscriminatory as a part of, or in relation to, system rates contained in schedules for areas and services beyond jurisdiction of Public Utility Commission of District of Columbia so that District consumers would not subsidize non-District consumers or vice versa. *Capital Transit Co.* v. *Public Utilities Commission et al.* (1954, 213 F. 2d 176, 93 U. S. App. D. C. 194, certiorari denied 75 S. Ct. 25, 348 U. S. 816, 99 L. Ed. 643).

§ 43–302. Use of equipment of other companies—Application to Commission to require such use in event of disagreement.

Every utility doing business in the District of Columbia having tracks, conduits, subways, poles, wires, switchboards, exchanges, works, or other equipment shall, for a reasonable compensation, permit the use of the same by any other public utility whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owners or other users of such equipment; nor in any substantial detriment to the service to be rendered by such owners or other users. In case of failure to agree upon such use, or the conditions or compensation for such use, any public utility or any person, firm, copartnership, association, or corporation interested may apply to the commission, and if after investigation the commission shall ascertain that public convenience and necessity require such use and that it would not result in irreparable injury to the owners or other user of such equipment nor in any substantial detriment to the service to be rendered by such owners or other users of such equipment, it shall by order direct that such use be permitted and prescribe the conditions and compensation for such joint use. Such use so ordered shall be permitted and such conditions and compensation so prescribed shall be the lawful conditions and compensation to be observed, followed, and paid, subject to recourse to the courts upon the complaint of any interested party, as hereinafter provided, which provisions, so far as applicable, shall apply to any action arising on such complaint so made. Any such order of the commission may be from time to time revised by the commission upon application of any interested party or upon its own motion after hearing and notice by order in writing. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 3.)

CROSS REFERENCES

Joint use of bridges, see §§ 7–505, 7–507, 7–508, 7–511.

Joint use of certain railroad facilities, see §§ 7–1213, 7–1216 to 7–1224, 44–208 to 44–212.

Rules and regulations relative to inspections, tests, audits, investigations, and hearings, see § 43–402.

Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company, see § 43–1108.

§ 43–303. Commission to compel compliance with chapters 1–10 of this title, with laws, ordinances, and charter—Criminal liability continued.

The commission shall have power, after hearing and notice by order in writing, to require and compel every public utility to comply with the provisions of chapters 1–10 of this title, and with all other laws of the United States applicable, and any municipal ordinance or regulation relating to said public utility, and to conform to the duties upon it thereby imposed or by the provisions of its own charter, if any charter has or shall be granted it: *Provided,* That nothing herein contained shall be held to relieve any public utility, its officers, agents, or servants, from any punishment, fine, forfeiture, or penalty for violation of any such law, ordinance, regulation, or duty imposed by its charter, nor to limit, take away, or restrict the jurisdiction of any court or other authority which on March 4, 1913, had or which may thereafter have power to impose any such punishment, fine, forfeiture, or penalty. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 4.)

CROSS REFERENCES

Certified copies of orders, effect as evidence, see § 43–713.

Criminal penalties, see §§ 43–901 to 43–913.

Penalties and forfeitures provided by this act do not bar proceedings or prosecutions under other laws, see § 43–913.

NOTES TO DECISIONS

Jurisdiction

Where transit company for the District of Columbia installed radio loudspeakers in its vehicles for radio broadcasts of music and commercial announcements, and on protest of passengers the Public Utilities Commission ordered an investigation and dismissed the investigation by final order which was appealed to the District Court which dismissed the petitions of the passengers on the grounds that no legal rights had been invaded, jurisdiction of the Commission and the District Court was present. *Pollak et al.* v. *Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

§ 43–304. Proposed changes in law to be submitted to Commission—Hearings—Recommendations to Congress.

Whenever any public utility or person shall propose any change in any law relating directly or indirectly to the property or operations of any public utility the said proposed change shall also and at the same time be submitted to the commission, which may take testimony and give a public hearing thereon, and the commission shall recommend such bills as will in its judgment protect the interests of the public and such public utility and transmit the same to the proper committees of the Senate and House of Representatives. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 5.)

§ 43–305. Commission to ascertain cost of construction, replacement value, outstanding stock—Information to be printed in annual report.

The commission shall ascertain, as soon and as nearly as practicable, the amount of money expended in the construction and equipment of every public utility, including the amount of money expended to procure any right of way; also the amount of money it would require to secure the right of way, reconstruct any roadbed, track, depots, cars, conduits, subways, poles, wires, switchboards, exchanges, offices, works, storage plants, power plants, machinery, and any other property or instrument not included in the foregoing enumeration used in or useful to the business of such public utility, and to replace all the physical properties belonging to the public utility. It shall ascertain the outstanding stock, bonds, debentures, and indebtedness, and the amount, respectively, thereof, the date when issued, to whom issued, to whom sold, the price paid in cash, property, or labor therefor, what disposition was made of the proceeds, by whom the indebtedness is held, so far as ascertainable, the amount purporting to be due thereon, the floating indebtedness of the public utility, the credits due the public utility, other property on hand belonging to it, the judicial or other sales of said public utility, its property or franchises, and the amounts purporting to have been paid, and in what manner paid therefor, and the taxes paid thereon. The commission shall also ascertain in detail the gross and net income of the public utility from all sources, the amounts paid for salaries to officers and the wages paid to its employees, and the maximum hours of continuous service required of each class. Whenever the information required by this section is obtained it shall be printed in the annual report of the commission. In making such investigation the commission may avail itself of any information in possession of any department of the government of the United States or of the commissioners of the District of Columbia. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 6.)

CROSS REFERENCES

Application to court for instructions, see § 43–704.
Payment of expenses, see § 43–412.
Rates and rate making, see § 43–401.
Records, form and requisites, see §§ 43–309 to 43–319.
Rules and regulations relative to inspections, tests, audits, investigations, and hearings, see § 43–402.

NOTES TO DECISIONS

In general

The valuation sections of the code are not binding on District of Columbia Public Utilities Commission in gas rate proceedings. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

Goodwill

Court when fixing rate base valuation of street railway property on appeal from the Public Utilities Commission could properly include the goodwill of one of the companies that had previously consolidated. *Public Utilities Comm.* v. *Capital Trac. Co.* (1927, 17 F. 2d 673, 57 App. D.C. 85).

Methods used by commission—In general

The composition of gas rate base is within province of District of Columbia Public Utilities Commission, and commission can adopt any method of valuation so long as end result of rate order is not unjust and unreasonable and can even use a method of calculating rates other than the traditional one which depends on the finding of a rate base. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

—— Segregation of properties

Where electric power company supplied from the same powerhouse electric current to customers in the District of Columbia and to customers in Maryland and Virginia, the Public Utilities Commission of the District of Columbia, in determining whether rates for electric power should be increased, properly treated the business of the company as a single enterprise and refused to segregate properties or allocate costs attributable to the part of the business done in the District of Columbia. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

If part of the business of electric power company is subject to state regulation and part is subject to federal regulation, state, in fixing rates, must segregate properties used in the intrastate business and establish intrastate rates on basis of the segregated properties as a rate base, and costs must be allocated as between intrastate and interstate business, but such segregation is not mandatory if business of company is subject to regulation by two or more states, no part of it being subject to federal supervision. *Id.*

Normally, the unit for rate-making purposes for electricity is the entire inter-connected operating property of the utility, without regard to geographical subdivisions, though conditions may be such as to require or permit segregation of a smaller unit. *Id.*

§ 43–306. Property to be valued as of time of evaluation.

The commission shall value the property of every public utility within the District of Columbia actually used and useful for the convenience of the public at the fair value thereof at the time of said valuation. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 7.)

CROSS REFERENCES

Application to court for instructions, see § 43–704.
Expenses of making valuation, see § 43–412.

NOTES TO DECISIONS

In general

The composition of gas rate base is within province of District of Columbia Public Utilities Commission, and commission can adopt any method of valuation so long as end result of rate order is not unjust and unreasonable and can even use a method of calculating rates other than the traditional one which depends on the finding of a rate base. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U.S. App. D. C. 115, certiorari denied 71 S.Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

Where consent decree fixed rate base, established a sliding scale of rates, and provided that if rates yielded more than a certain per cent return, one-half of excess should be used in reduction of future rates, and Public Utilities Commission, after full hearing on proper notice, directed electric company to file new lower rate schedules, the new rate order, which would allow fair return on fair valuation, was not invalid on ground that company had not consented thereto nor on ground that valuation requirements of this section had not been complied with. *Potomac Elec. Power Co.* v. *Public Utilities Commission of District of Columbia* (1947, 158 F. 2d 521, 81 U.S. App. D.C. 225, certiorari denied 67 S. Ct. 1303, 331 U.S. 816, 91 L. Ed. 1834).

Conclusiveness of valuation statutes

The valuation sections of the code are not binding on District of Columbia Public Utilities Commission in gas rate proceedings. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

§ 43–307. Valuation—Notice and hearing—Statement of valuation to be filed.

Before final determination of such value the commission shall, after notice of not less than thirty days to the public utility, hold a public hearing as to such valuation in the manner hereinafter provided for a hearing, which provisions, so far as applicable, shall apply to such hearing. The commission shall, within ten days after such valuation is determined, serve a statement thereof upon the public utility interested, and shall file a like statement with the District Committees in Congress. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 8.)

CROSS REFERENCES

Payment of expenses of proceedings, see § 43–412.

Rules and regulations relative to inspections, tests, audits, investigations, and hearings, see § 43–402.

§ 43–308. Revaluation.

The commission may at any time, on its own initiative, make a revaluation of the property of any public utility. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 9.)

CROSS REFERENCES

Application to court for instructions, see § 43–704.

Payment of expenses of revaluating, see § 43–412.

§ 43–309. Uniform accounts to be rendered—Separate account of other business may be required.

Every public utility shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted. Every public utility engaged directly or indirectly in any other business than that of the conduct of a street railway, or the production, transmission, or furnishing of heat, light, water, or power, or the conveyance of telegraph or telephone messages, shall, if required by the commission, keep and render separately to the commission in like manner and form the accounts of all such other business, in which case all the provisions of chapters 1–10 of this title shall apply with like force and effect to the books, accounts, papers, and records of such other business. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 10.)

CROSS REFERENCES

Criminal penalties for violation of this section, see § 43–905.

Witnesses; production of books, records, and accounts; investigation of records and accounts; duty of utility companies to furnish information, records, and accounts, see §§ 43–405 to 43–407.

§ 43–310. Commission to prescribe forms of books and records.

The commission shall prescribe the forms of all books, accounts, papers, and records required to be kept, and every public utility is required to keep and render its books, accounts, papers, and records accurately and faithfully in the manner and form prescribed by the commission, and to comply with all directions of the commission relating to such books, accounts, papers, and records. In so far as practicable for the purposes of chapters 1–10 of this title, the form prescribed shall be the form accepted by the Interstate Commerce Commission. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 11.)

CROSS REFERENCE

Criminal penalties, see § 43–905.

NOTES TO DECISIONS

Accounting procedures, regulations of

The statutes confer broad discretion upon the Public Utilities Commission in regulating the accounting procedures of the utilities company under its jurisdiction. *D.C. Transit System, Inc.* v. *Public Utilities Commission, etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

Arbitrary or capricious

Order of the Public Utilities Commission directing transit company to transfer a sum from the proceeds of the sale of property from its earned surplus account to three different accounts was not unreasonable, arbitrary, or capricious. *D.C. Transit System, Inc.* v. *Public Utilities Commission, etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

§ 43–311. Commission to furnish blank forms.

The commission shall cause to be prepared suitable blanks for carrying out the purposes of chapters 1–10 of this title, and shall when necessary furnish such blanks to each public utility. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 12.)

§ 43–312. Utilities to have office in the District of Columbia—Books and records of utilities not to be removed from the District of Columbia—Records may be kept at general office of utility.

Each public utility shall have an office within the District of Columbia in which it shall keep all such books, accounts, papers, and records as shall be required by the commission to be kept within the District of Columbia. No books, accounts, papers, or records required by the commission to be kept within the District of Columbia shall be at any time removed from the District of Columbia, except upon such condition as may be prescribed by the Commission: *Provided*, That public utilities operating in the District of Columbia and elsewhere who have their general or executive offices outside of the District, may continue to keep their books, accounts, records, and so forth, at their executive or general offices, such public utilities being required, however, to produce before the commission such books, accounts, records,

and papers from time to time as the commission may order. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 13.)

CROSS REFERENCE

Rules and regulations relative to inspections, tests, audits, investigations, and hearings, see § 43–402.

§ 43–313. Accounts to be closed annually—Verified balance sheet to be filed with Commission—Copy to Congress.

The accounts shall be closed annually on the thirty-first day of December, and a balance sheet of that date promptly taken therefrom. On or before the first day of February following such balance sheet, together with such other information as the commission shall prescribe, verified by an owner or officer of the public utility, shall be filed with the commission, and a copy thereof transmitted to Congress. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 14.)

§ 43–314. Commission to provide for examination and audit of accounts—Allocation of items to accounts—Authority of agents, accountants, and examiners.

The commission shall provide for the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the commission. The agents, accountants, or examiners employed by the commission shall have authority, under the direction of the commission, to inspect and examine any and all books, accounts, papers, records, and memoranda kept by such public utility. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 15.)

CROSS REFERENCES

Payment of expense of audit, see § 43–412.
Rules and regulations, see § 43–402.
Similar provisions, see § 43–404.

NOTES TO DECISIONS

Accounting procedures, regulation of

The statutes confer broad discretion upon the Public Utilities Commission in regulating the accounting procedures of the utilities company under its jurisdiction. *D.C. Transit System, Inc.* v. *Public Utilities Commission, etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

Arbitrary or capricious

Order of the Public Utilities Commission directing transit company to transfer a sum from the proceeds of the sale of property from its earned surplus account to three different accounts was not unreasonable, arbitrary, or capricious. *D.C. Transit System, Inc.* v. *Public Utilities Commission, etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

§ 43–315. Depreciation account—Rates of depreciation—Application of depreciation fund.

Every public utility shall carry a proper and adequate depreciation account. The commission shall ascertain and determine what are the proper and adequate rates of depreciation of the several classes of property of each public utility. These rates shall be such as will provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates so ascertained and determined by the commission. The commission may make changes in such rates of depreciation from time to time as it may find to be necessary. The commission shall also prescribe rules, regulations, and forms of accounts regarding such depreciation which the public utility is required to carry into effect. The commission shall provide for such depreciation in fixing the rates, tolls, and charges to be paid by the public. All moneys in this fund may be expended in keeping the property of such public utility in repair and good and serviceable condition for the use to which it is devoted, or invested, and, if invested, the income from the investments shall also be carried in the depreciation fund. This fund and the proceeds thereof shall be used for no other purpose than as provided in this section, unless with the consent and by order of the commission. Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 16.)

CROSS REFERENCE

Rules and regulations generally, see § 43–202.

§ 43–316. Commission to keep informed of new construction—Construction account.

The commission shall keep itself informed of all new construction, extensions, and additions to the property of all public utilities, and shall prescribe the necessary forms, regulations, and instructions to the officers and employees of all public utilities for the keeping of construction accounts, which shall clearly distinguish all operating expenses and new construction. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 17.)

CROSS REFERENCES

Power of commission to require repairs to be made, see § 43–208.
Rules and regulations generally, see § 43–202.

§ 43–317. Sliding scale of rates and dividends.

Nothing in chapters 1–10 of this title shall be taken to prohibit a public utility, with the consent of the commission, from providing a sliding scale of rates and dividends according to what is commonly known as the Boston sliding scale, or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purposes of chapters 1–10 of this title. Such arrangement shall be under the supervision and regulation of the commission. The commission shall ascertain, determine, and order such rates, charges, and regulations, and the duration thereof, as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges, and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to alter or amend all orders relative thereto, is reserved and vested in the commission notwithstanding any such arrangement and mutual agreement. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 18.)

CROSS REFERENCES

Payment of expenses of investigation, see § 43–412.
Power of commission to alter or amend unreasonable or discriminatory rates, regulations, or practices, see § 43–911.
Rate making, see § 43–401.
Rules and regulations generally, see § 43–202.

NOTES TO DECISIONS

Deposits

Order of Public Utilities Commission which permits deposits in advance from those unable to establish finan-

cial responsibility was not discriminatory. *Riegel* v. *Public Utilities Comm.* (1931, 48 F. 2d 1023, 60 App. D. C. 111).

Emergency Fleet Corporation

The Emergency Fleet Corporation, although organized as a private corporation under District of Columbia laws, is entitled to the benefit of the provisions of the Post Roads Act of 1866 giving it special rates for telegraph service. *United States Shipping Board Emergency Fleet Corp.* v. *Western Union Tel. Co.* (1928, 48 S. Ct. 198, 275 U. S. 415, 72 L. Ed. 345).

Emergency Price Control Act

In determining whether power of Public Utility Commission of District of Columbia to regulate utility rates had been restricted by amendment to Emergency Price Control Act, former section 901 et seq. and section 961 of title 50 U. S. Code App., the purpose of said act and amendment were required to be considered. *Washington Gas Light Co.* v. *Byrnes* (1943, 137 F. 2d 547, 78 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

On application of gas company to Public Utilities Commission of the District of Columbia for a rate increase in accordance with a sliding scale arrangement entered into in 1935, Commission should afford president's representatives the opportunity to intervene pursuant to amendment to Emergency Price Control Act, former section 901 et seq. and section 961 of title 50 U. S. Code App., and grant them opportunity to fully test the inflationary trend, if any, which proposed increase in rates might portend. *Byrnes* v. *Flanagan* (D.C.D.C. 1943, 48 F. Supp. 703).

Public Utilities Commission of the District of Columbia could not proceed on application of gas company for a rate increase in accordance with a sliding scale arrangement entered into in 1935 alone, in face of amendment to Emergency Price Control Act, former section 901 et seq. and section 961 of title 50 U. S. Code App., requiring public utilities seeking general increase in their rates which were in effect on September 15, 1942, to first give 30 days' notice to president, or such agency as he may designate, and consent to timely intervention by such agency before the federal, state or municipal authority having jurisdiction to consider such increase. *Id.*

Emergency purposes, rates for

If gas rates are to be granted for emergency purposes in a summary proceeding before the District of Columbia Public Utilities Commission, provision should be made for adjustment of subsequent rates, as under the sliding scale arrangement, if upon a statutory full rate hearing it should be found that the emergency rates had produced either excessive or inadequate returns. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

Previously established rates

District of Columbia Public Utilities Commission not inquiring into issues necessary to determination of fair rate of return in gas rate proceeding could not rely on finding in some prior rate proceeding that six percent was fair rate of return, where risk factor had been materially reduced in recent years and pertinent local conditions and economic factors had not remained static. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U. S. App. D. C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

§ 43–318. Utilities to furnish accounts and reports—Information to be included.

Each public utility shall furnish to the commission in such form and at such times as the commission shall require, such accounts, reports, and information as shall show in itemized detail: Depreciation; salaries and wages; legal expenses; taxes and rentals; quantity and value of material used; receipts from residuals, by-products, services, or other sales; total and net costs; net and gross profits; dividends and interest; surplus or reserve; prices paid by consumers; and in addition such other items, whether of a nature similar to those hereinbefore enumerated or otherwise, as the commission may prescribe, in order to show completely and in detail the entire operation of the public utility in furnishing its product or service to the public. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 19.)

CROSS REFERENCES

Annual reports by street railroads, see § 44–215.
Reports by gas companies, see § 43–1206.
Rules and regulations, see § 43–402.

§ 43–319. Annual report of Commission.

The commission shall publish annual reports showing its proceedings relating to all the public utilities of each kind in the District of Columbia, and such other occasional reports as it may deem advisable. The commission shall also publish in its annual reports the value of all property actually used and useful for the convenience of the public, of every public utility as to whose rates, charges, service, or regulations any hearing has been held by the commission or the value of whose property has been ascertained by it under the provisions of chapters 1–10 of this title. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 20.)

§ 43–320. Commission to fix adequate and serviceable standards—Regulations for testing products, service, and meters.

The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other condition pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulations for examining and testing such product or service and for the measurement thereof. It shall establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurements, and every public utility is required to carry into effect all orders issued by the commission relative thereto. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 21.)

CROSS REFERENCES

Provisions for testing gas and electric meters, rules and regulations, see § 43–603.
Provisions for testing quality of gas, see § 43–605.
Rules and regulations generally, see § 43–202.

§ 43–321. Commission to provide for examination and test of appliances—Fees paid by consumer—Appliances to be tested at request of consumer.

The commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliance tested upon payment of the fees fixed by the commission. The commission shall declare and establish reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance be found defective or incorrect to the disadvantage of the consumer or user. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 22.)

§ 43–322. Commission may purchase material and equipment for tests—Entry on premises of utilities for purpose of tests.

The commission may purchase such materials, apparatus, and standard measuring instruments for

such examination and tests as it may deem necessary. The commission, its agents, experts, or examiners, shall have power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided for in chapters 1–10 of this title, and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 23.)

CROSS REFERENCE

Criminal penalties for destruction of apparatus belonging to commission, see § 43–909.

§ 43–323. Schedule of rates to be filed—Existing rates to remain in force until changed.

Every public utility shall file with the commission, within a time to be fixed by the commission, schedules, which shall be open to public inspection, showing all rates, tolls, and charges which it has established and which are in force at the time for any service performed by it within the District of Columbia, or for any service in connection therewith or performed by any public utility controlled or operated by it. The rates, tolls, and charges shown on such schedules shall not exceed the rates, tolls, and charges allowed by law on March 4, 1913, and shall be the lawful rates, tolls, and charges within the District of Columbia, and shall remain and be in force until set aside by the commission. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 24.)

CROSS REFERENCE

Changing existing rates, see § 43–401.

NOTES TO DECISIONS

Jurisdiction of commission

Limitations upon the commission forbid any attempt at regulation by it of the manner or price at which gas shall be delivered by a Maryland company to its consumers. *Galloway* v. *Bell* (1926, 11 F. 2d 558, 56 App. D.C. 172).

§ 43–324. Rules and regulations affecting rates to be filed.

Every public utility shall file with and as a part of such schedule all rules and regulations that in any manner affect the rates charged or to be charged for any service. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 25.)

CROSS REFERENCE

Rate making, see § 43–401.

§ 43–325. Copy of rate schedule to be available for public inspection.

A copy of so much of said schedules as the commission shall deem necessary for the use of the public shall be printed in plain type and kept on file in every station and office of such public utility where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public and so as to be conveniently inspected. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 26.)

§ 43–326. Schedule of joint rates to be filed.

Where a schedule of joint rates or charges is, or may be, in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission, and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office, as provided in section 43–325. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 27.)

§ 43–327. Change in schedule—Notice.

No change shall be made in any schedule, including schedules of joint rates, except upon ten days' notice to the commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof ten days prior to the time the same are to take effect: *Provided*, That the commission, upon application of any public utility, may prescribe a less time within which a reduction may be made. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 28.)

CROSS REFERENCES

Changes to conform to orders of commission, see § 43–701.

Rate making, see § 43–401.

§ 43–328. New schedules to be filed.

Copies of all new schedules shall be filed, as hereinbefore provided, in every station and office of such public utility where payments are made by consumers or users ten days prior to the time the same are to take effect, unless the commission shall prescribe a less time. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 29.)

CROSS REFERENCE

Rate making, see § 43–401.

§ 43–329. Utility not to receive greater or less compensation than fixed in schedule.

It shall be unlawful for any public utility to charge, demand, collect, or receive a greater or less compensation for any service performed by it within the District of Columbia, or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect, or receive any rate, toll, or charge not specified in such schedules. The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed as provided in chapters 1–10 of this title. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 30.)

CROSS REFERENCES

Criminal penalties, see §§ 43–902, 43–904.

Other provisions concerning discriminatory rates, see § 43–301.

Rate making, see § 43–401.

§ 43–330. Commission may prescribe changes in form of schedule.

The commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 31.)

CROSS REFERENCE

Rate making, see § 43–401.

Chapter 4.—RATES, EXAMINATIONS, INVESTIGATIONS, AND HEARINGS

Sec.

43–401. Existing rates continued—Schedules to be filed—Application to change rates—Review of ruling by District Court.
43–402. Commission may adopt rules and regulations.
43–403. Commission to keep informed as to conduct of business—May obtain from utilities all necessary information.

Sec.
43–404. Inspection of books and examination of officers of utilities.
43–405. Production of records of utilities compellable by summons—Attendance of witnesses—Duties of United States attorney and corporation counsel.
43–406. Appointment of investigating agents—Powers.
43–407. Utilities to furnish information required by Commission—Maps, books, reports to be delivered to Commission on request.
43–408. Commission may investigate unjust discriminatory rates, schedules, or services—No order to be entered without formal hearing.
43–409. Commission to notify utility of complaints.
43–410. Notice as to hearings—Compulsory attendance of witnesses.
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43–412. Expenses of investigation or revaluation to be borne by utility—Deposit for costs—Limitation of expenditures in rate and revaluation hearings.
43–413. Separate hearings on complaints—Complaints not to be dismissed because of absence of direct damage.
43–414. Summary investigation.
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43–417. Utility may make complaint.
43–418. Commissioners and agents may administer oaths, issue subpoenas, proceeding to punish for contempt.
43–419. Witness fees.
43–420. Testimony may be taken by deposition.
43–421. Record of proceedings to be kept—Testimony to be taken stenographically.
43–422. Transcript of evidence or proceedings, certified by stenographer, to be received in evidence—Copy of transcript to be furnished without cost

§ 43–401. Existing rates continued—Schedules to be filed—Application to change rates—Review of ruling by District Court.

First, unless the commission shall otherwise order, it shall be unlawful for any public utility within the District of Columbia to demand, collect, or receive a greater compensation for any service than the charge fixed on the lowest schedule of rates for the same service under the law in force on March 4, 1913; second, every public utility in the District of Columbia shall, within thirty days after March 4, 1913, file in the office of the commission copies of all schedules of rates and charges, including joint rates, in force on March 4, 1913; third, any public utility desiring to advance or discontinue any such rate or rates may make application to the commission in writing, stating the advance in or discontinuance of the rate or rates desired, giving the reasons for such advance or discontinuance; fourth, upon receiving such application the commission shall fix a time and place for hearing, and give such notice to interested parties as shall be proper and reasonable; if, after such hearing and investigation, the commission shall find that the change or discontinuance applied for is reasonable, fair, and just, it shall grant the application, either in whole or in part; fifth, any public utility being dissatisfied with any order of the commission made under the provisions of this section may commence a proceeding against it in the United States District Court for the District of Columbia in the manner as is in chapters 1–10 of this title provided, which action shall be tried and determined in the same manner as is in chapters 1–10 of this title provided. (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 94; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCES

Accounts required; form and requisites, audits, expenses of audits, see §§ 43–309 to 43–319.

Alteration, revocation, or amendment of orders, see § 43–702.

Changing rates, see § 43–411.

Complaint by utility company for change of rate or service, see § 43–417.

Constitutionality of act, see § 43–1003.

Criminal penalties for discriminatory rates; refusal to give information, testimony, records, or accounts; failure to obey laws, rules, orders, or regulations, see §§ 43–902, 43–908.

Discriminatory rates forbidden, see § 43–301.

Enforcement of orders, appeal or review, rights and duties pending appeal, see § 43–701 et seq.

Filing schedules of rates and charges; rates and charges effective when act took effect, change thereof, see §§ 43–323 to 43–330.

Investigation of unreasonable or discriminatory rates, see § 43–408.

Itemized accounts and reports required of utility companies, see § 43–318.

Liberal construction of act, see § 43–1003.

Power of commission to alter or amend unreasonable or discriminatory rates, regulations, or practices, see § 43–911.

Rates for electric power companies, see § 43–1107.

Rates for gas companies, see § 43–1207.

Saving clause for laws, regulations, or orders and pending proceedings, see §§ 43–1005, 43–1006.

Sliding scale of rates and dividends, see § 43–317.

Street railroads, see §§ 44–207, 44–212 to 44–214.

Summary investigation of rates, see § 43–414.

Valuation of public utilities, see §§ 43–305 to 43–308.

NOTES TO DECISIONS

Burden of proof

In proceeding by power company, which served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, and which was also subject to regulation by other commissions, including Federal Power Commission, before Public Utility Commission of District of Columbia for rate increase, wherein power company's customer, a District of Columbia transit company, intervened as an interested party, burden upon customer to sustain its attack upon order granting rate increases was carried where findings rationally manifesting the method used in determining the rates, essential to adequate review, were lacking. *Capital Transit Co.* v. *Public Utilities Commission et al.* (1954, 213 F. 2d 176, 93 U. S. App. D. C. 194, certiorari denied 75 S. Ct. 25, 348 U. S. 816, 99 L. Ed. 643).

Discretion of commission

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U. S. App. D. C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

In public utility rate proceeding, Public Utility Commission's refusal of demand of intervening Price Administrator that thoroughgoing examination be made into rate

base, rate of return, operating expenses, depreciation, and all other matters relative to establishment of fair return was not an abuse of discretion. *Washington Gas Light Co.* v. *Byrnes* (1943, 137 F. 2d 547, 78 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

Ordinarily, in determining electric power rate, question whether smaller unit of electric power should be used as a basis for rate making is a matter of discretion for the regulatory agency. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

Bus and street car transportation between points in the District of Columbia and points on the Virginia side of the Potomac River, which operations were performed within territorial limits of the District of Columbia municipal zone and involved intrastate transportation subject to regulation by the Commissions of Virginia and the District of Columbia, was not "interurban" but "urban transportation," and, as such, it was not within jurisdiction of Interstate Commerce Commission to regulate fares for such transportation. *Capital Transit Co.* v. *United States* (D.C.D.C. 1944, 55 F. Supp. 51).

Evidence

Evidence sustained orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

Hearing, sufficiency of

Record showed that the Director of Economic Stabilization and the Administrator of the Office of Price Administration of the United States as interveners in a rate proceeding before the Public Utilities Commission of the District of Columbia were offered every opportunity for a full hearing. *Vinson* v. *Washington Gas Light Co.* (1944, 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

The District of Columbia Public Utilities Commission's statement that return of less than four per cent was inadequate to maintain gas company in sound financial condition was insufficient to support commission's conclusion that gas rates were reasonable, just and nondiscriminatory, where the commission adopted prudent investment theory of rate regulation but did not subject issue of rate of return to inquiry at the hearing. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

Jurisdictional lines

Where problem of determining rate for power company lies across jurisdictional lines and is not solved by the permissible formulae of allocating, as between jurisdictions, either properties, costs, and revenues, or costs and revenues, method which is adopted must be rationally manifested in findings and conclusions, the findings grounded in evidence and the conclusions grounded in evidence and reasoning, which enable the court to support the rates for one jurisdiction alone. *Capital Transit Co.* v. *Public Utilities Commission et al.* (1954, 213 F. 2d 176, 93 U. S. App. D. C. 194, certiorari denied 75 S. Ct. 25, 348 U. S. 816, 99 L. Ed. 643).

Where areas served by power company are found to be substantially the same with respect to all features bearing upon reasonableness of power company's rate, and areas are shown to be intimately bound together, there is not any occasion to separate costs and revenues of power company according to jurisdictional lines, but evidence and findings must bring the situation within such tests if such tests are to apply. *Id.*

Power to fix rates

The power to fix public utility rates is a legislative power which has been delegated by Congress to Public Utility Commission of District of Columbia, and in its exercise, within constitutional limits, discretion of commission may not be controlled even by courts. *Washington Gas Light Co.* v. *Byrnes* (1943, 137 F. 2d 547, 78 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

The Emergency Price Control Act of 1942, former section 901 et seq. of title 50 U. S. Code App., and the Inflation Control Act of 1942, former section 961 et seq. of title 50 U. S. Code App., did not limit powers conferred by law on regulatory commissions over utility rates nor prohibit such commissions from permitting any increase in utility rates which were not shown to be necessary to prevent actual hardship, nor endow a different federal agency with new and superior rights and powers over utility rates. *Vinson* v. *Washington Gas Light Co.* (1944, 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

Prudent investment theory

A commission, in reaching decision concerning reasonable rate of return for power company under the prudent investment theory of rate regulation, must make findings upon underlying issues of return necessary to service company's outstanding funded debt and its preferred stock, return necessary to attract investors in common stock, and return on funded debts, preferred stock, and common stock of other public utilities having a risk factor similar to that of the company, and upon issue whether local conditions, economic conditions generally, and risk factor have remained static since determination of rate of return in a previous proceeding involving the company. *Capital Transit Co.* v. *Public Utilities Commission et al.* (1954, 213 F. 2d 176, 93 U. S. App. D. C. 194, certiorari denied 75 S. Ct. 25, 348 U. S. 816, 99 L. Ed. 643).

Rate base

Where power company served District of Columbia and parts of Virginia and Maryland and certain interstate consumers, ascertainment of rate base on basis of system-wide operations of the well integrated power company without allocation of its properties, costs, or revenues to the different jurisdictions served was not illegal in itself nor upon facts peculiar to power company's case. *Capital Transit Co.* v. *Public Utilities Commission et al.* (1954, 213 F. 2d 176, 93 U. S. App. D. C. 194, certiorari denied 75 S. Ct. 25, 348 U. S. 816, 99 L. Ed. 643).

In aid of process of rate making within jurisdiction of Public Utility Commission of the District of Columbia, Commission may make findings upon evidence concerning conditions and events beyond its regulatory jurisdiction if such conditions and events are thought to affect rates to be determined by Commission. *Id.*

Where electric power company supplied from the same powerhouse electric current to customers in the District of Columbia and to customers in Maryland and Virginia, the Public Utilities Commission of the District of Columbia, in determining whether rates for electric power should be increased, properly treated the business of the company as a single enterprise and refused to segregate properties or allocate costs attributable to the part of the business done in the District of Columbia. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

Reconsideration after intervention

Record showed that Director of Economic Stabilization and Administrator of the Office of Price Administration as interveners in a rate proceeding before the Public Utilities Commission in the District of Columbia requested the reconsideration of the basic principle of sliding scale arrangement and demanded the suspension of the sliding scale and re-examination of its basis in a complete investigation of all the elements that entered into the determination of a utility rate by a regulatory body and that such demands were properly denied. *Vinson* v. *Washington Gas Light Co.* (1944, 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

Tariff provisions, hearings on

Statute requiring Public Utilities Commission to permit increase in rates by a utility only upon application and after notice, hearing, and investigation did not make invalid the tariff provision, which was accepted by commission without notice, hearing, and investigation, and which limited liability of telephone company for omissions in telephone directory listings. *J. F. Bird* v. *The Chesapeake and Potomac Telephone Co.* (D.C. Mun. App. 1962, 185 A. 2d 917).

§ 43–402. Commission may adopt rules and regulations.

The commission shall have power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to

adopt and publish reasonable and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 32.)

CROSS REFERENCE

Rules and regulations generally, see § 43–202.

NOTES TO DECISIONS

Federal laws, scope of

The right conferred on Price Administrator to intervene in public utility rate proceeding does not include the power to compel the regulatory party to undertake a complete investigation against its better judgment or upon lines contrary to governing statute. *Washington Gas Light Co.* v. *Byrnes* (1943, 137 F. 2d 547, 78 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

Intervention, effect of

The intervention of the Director of Economic Stabilization and Administrator of Office of Price Administration in rate proceeding before the Public Utilities Commission of the District of Columbia was in subordination to Commission's standing rule that intervention should not change or enlarge the issues. *Vinson* v. *Washington Gas Light Co.* (1944, 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

§ 43–403. Commission to keep informed as to conduct of business—May obtain from utilities all necessary information.

The commission shall keep itself informed as to the manner and method in which the business of all public utilities is conducted, and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 33.)

CROSS REFERENCE

Utility companies required to keep and furnish information, accounts, books, and records, see §§ 43–309 to 43–319.

§ 43–404. Inspection of books and examination of officers of utilities.

The commission or any commissioner or any person or persons employed by the commission for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records, and memoranda of any public utility, and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs. Any person other than one of said commissioners who shall make such demand shall produce his authority to make such inspection or examination. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 34.)

CROSS REFERENCE

Similar provisions, see § 43–314 et seq.

§ 43–405. Production of records of utilities compellable by summons—Attendance of witnesses—Duties of United States attorney and corporation counsel.

The commission may require, by order or subpœna, to be served upon any public utility in the same manner that a summons is served in a civil action in the United States District Court for the District of Columbia, the production within the District of Columbia at such time and place as it may designate of any books, accounts, papers, or records kept by such public utility in any office or place without the District of Columbia, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission under its direction. Any public utility failing or refusing to comply with any order or subpœna shall for each day it shall so fail or refuse forfeit and pay to the District of Columbia the sum of one hundred dollars, to be recovered in an action to be brought in the name of said District.

Attendance of witnesses and the production of such documentary evidence may be required from any place in the United States. And in case of disobedience to a subpœna the commission, or any party to a proceeding before the commission may invoke the aid of any court of the United States or the United States District Court for the District of Columbia in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section. And the said commission is hereby given power to call on any United States attorney, the corporation counsel of the District of Columbia or any counsel of the commission to enforce the provisions of chapters 1–10 of this title in the proper courts of the United States, and on such call it shall be the duty of the said United States attorney, corporation counsel, or any counsel of the commission, upon request of said commission, to enforce the provisions of this section, the cost and expenses incurred to be paid out of the appropriations for the expenses of the courts of the United States. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 35; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, § 32(b), eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act June 25, 1948, § 1, eff. Sept. 1, 1948, substituted "United States Attorney" for "United States District Attorney." See U.S. Code, title 28, § 501.

CROSS REFERENCES

Commissioners and agents may issue subpoenas, see § 43–418.

Criminal penalties, see § 43–905.

Depositions, see § 43–420.

Records and accounts required to be kept by utility companies, see §§ 43–309 to 43–319.

§ 43–406. Appointment of investigating agents—Powers.

For the purpose of making any investigation with regard to any public utility the commission shall have power to appoint, by an order in writing, an agent, whose duties shall be prescribed in such order. In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted in chapters 1–10 of this title to the commission and shall have power to administer oaths and take depositions. The commission may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agent or agents the taking of all testimony bearing upon any investigation or hearing. The decision of the commission shall be based upon its examination of all testimony and records. The

recommendations made by such agents shall be advisory only, and shall not preclude the taking of further testimony, if the commission so order, nor further investigation. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 36.)

CROSS REFERENCE

Commissioners and agents may issue subpoenas, see § 43–418.

§ 43–407. Utilities to furnish information required by Commission—Maps, books, reports to be delivered to Commission on request.

Every public utility shall furnish to the commission all information required by it to carry into effect the provisions of chapters 1–10 of this title, and shall make specific answers to all specific questions submitted by the commission. Any public utility receiving from the commission any blanks with directions to fill the same shall cause the same to be properly filled out so as to answer, fully and correctly, each question therein propounded, and in case it is unable to answer any question it shall give a good and sufficient reason for such failure; and said answer shall be verified under oath by the president, secretary, superintendent, or general manager of such public utility, and returned to the commission at its office within the period fixed by the commission. Whenever required by the commission, every public utility shall deliver to the commission any or all maps, profiles, contracts, reports of engineers, and all documents, books, accounts, papers, and records, or copies of any or all of the same, with a complete inventory of all its property, in such form as the commission may direct. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 37.)

§ 43–408. Commission may investigate unjust discriminatory rates, schedules, or services—No order to be entered without formal hearing.

Upon its own initiative or upon reasonable complaint made against any public utility that any of the rates, tolls, charges, or schedules, or services, or time and conditions of payment, or any joint rate or rates, schedules, or services, are in any respect unreasonable or unjustly discriminatory, or that any time schedule, regulation, or act whatsoever affecting or relating to the conduct of any street railway or common carrier, or the production, transmission, delivery, or furnishing of heat, light, water, or power, or any service in connection therewith, or the conveyance of any telegraph or telephone message, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate or can not be obtained, the commission may, in its discretion, proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, schedules, regulations, or act complained of shall be entered by the commission without a formal hearing. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 38.)

CROSS REFERENCE

Rate making generally, see § 43–401.

NOTES TO DECISIONS

In general

It was within statutory authority of the Public Utilities Commission of the District of Columbia to prohibit or to permit and regulate the receipt and amplification of transit radio programs on streetcars and busses under such conditions that total utility service would not be unsafe, uncomfortable or inconvenient. *Public Utilities Commission* v. *Pollak* (1952, 72 S. Ct. 813, 343 U. S. 451 96 L. Ed. 1068).

Administrative remedy

Where suit by transit company against carrier to obtain injunction against certain competitive bus operations alleged to be illegal, presented both judicial and administrative questions, but administrative action might be determinative of entire controversy, transit company would be required to exhaust its available administrative remedies before seeking injunctive relief. *Capital Transit Co.* v. *Safeway Trails, Inc.* (1953, 201 F. 2d 708, 92 U. S. App. D. C. 20).

Federal laws, scope of

The right conferred on Price Administrator to intervene in public utility rate proceeding does not include the power to compel the regulatory party to undertake a complete investigation against its better judgment or upon lines contrary to governing statute. *Washington Gas Light Co.* v. *Byrnes* (1943, 137 F. 2d 547, 78 U.S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

Findings of commission

Where Public Utilities Commission of the District of Columbia conducted investigation of transit radio service on busses and streetcars in accordance with prescribed statutory procedure and found that radio reception was not an obstacle to safety of operation, that public comfort and convenience were not impaired and that in fact the creation of better will among passengers tended to improve conditions under which the public rode, concluding that such installation and use were not inconsistent with public convenience, comfort and safety, Board was within its discretion in dismissing investigation. *Public Utilities Commission* v. *Pollak* (1952, 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

Legislative intent

It is not contemplated that any resident of the District, feeling himself aggrieved, may rush into the courts without first submitting his case to the Public Utilities Commission, whose duty it is primarily to hear and adjust and, if possible, finally dispose of such complaints. *Hollis* v. *Kutz* (1920, 265 F. 451, 49 App. D. C. 301).

Public opinion surveys

In proceeding by the Public Utilities Commission of the District of Columbia to determine whether installation and use of radio receivers in streetcars and busses were consistent with public convenience, comfort and safety, weight to be attached to public opinion surveys was a proper matter for determination by the Commission. *Public Utilities Commission* v. *Pollak* (1952, 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

Scope of review

In proceeding by the Public Utilities Commission of the District of Columbia to determine whether installation and use of radio receivers in streetcars and busses were consistent with public convenience, comfort and safety, courts on review were expressly restricted to facts found by Commission insofar as those findings did not appear to be unreasonable, arbitrary or capricious. *Public Utilities Commission* v. *Pollak* (1952, 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

§ 43–409. Commission to notify utility of complaints.

The commission shall prior to such formal hearing notify the public utility complained of that a complaint has been made, and ten days after such notice has been given the commission may proceed to set a time and place for a hearing and an investigation as hereinafter provided. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 39.)

§ 43–410. Notice as to hearings—Compulsory attendance of witnesses.

The commission shall give the public utility and the complainant, if any, ten days' notice of the time and place when and where such hearing and investigation will be held and such matters considered and determined. Both the public utility and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 40.)

§ 43–411. Reasonable rates may be ordered—Notice to be given utility affected thereby.

If upon such investigation the rates, tolls, charges, schedules, or joint rates shall be found to be unjust, unreasonable, insufficient, or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of chapters 1–10 of this title, the commission shall have power to determine and by order fix and order to be substituted therefor such rate or rates, tolls, charges, or schedules as shall be just and reasonable. If upon such investigation it shall be found that any regulation, time schedule, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of any of the provisions of this section, or if it be found that reasonable service is not supplied, the commission shall have power to determine and substitute therefor such other regulations, time schedules, service, or acts and to make such orders respecting and such changes in such regulations, time schedules, service, or acts as shall be just and reasonable. And upon any investigation for the purpose of determining upon and requiring any reasonable extension or extensions of lines or of service that shall promise to be compensatory within a reasonable time, the commission shall have power to fix, determine, and require every such extension or extensions to be made and the terms and conditions upon which the same shall be made: *Provided,* That no hearing shall be had and no order shall be made respecting such extension or extensions, without notice to the public utility affected thereby, as provided in section 43–410. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 41.)

CROSS REFERENCE

Rate making generally, see § 43–401.

NOTES TO DECISIONS

Constitutionality

The constitutional rights of private consumers of gas are not invaded by rates established by the Public Utilities Commission at a higher rate than is charged to the Government. *Hollis* v. *Kutz* (1921, 41 S. Ct. 371, 255 U. S. 452, 65 L. Ed. 727).

Cost of stock capital

In proceedings before Public Utilities Commission of District of Columbia relating to fixing gas rates, question before Commission was what constitutes a reasonable allowance based on cost of common stock capital, and by "cost of capital" is meant interest charges and enough more to attract capital to the company and to maintain its credit. *Washington Gas Light Co.* v. *Public Utilities Commission of District of Columbia* (D.C.D.C. 1944, 55 F. Supp. 627).

Determination of rates

Where power company's rates in District of Columbia are arrived at by formulating schedules on system-wide basis, extending into other jurisdictions, rates must be supported also by findings of similar conditions pertinent to rate-fixing where the other rates are similar or, where other rates are different, by findings of other relevant economic conditions which justify, on a rational basis, the District rates in relation to the other rates, and, if this can not be done, it would seem necessary to resort to allocation. *Capital Transit Co.* v. *Public Utilities Commission et al.* (1954, 213 F. 2d 176, 93 U. S. App. D. C. 194, certiorari denied 75 S. Ct. 25, 348 U. S. 816, 99 L. Ed. 643).

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

Where electric power company supplied from the same powerhouse electric current to customers in the District of Columbia and to customers in Maryland and Virginia, the Public Utilities Commission of the District of Columbia, in determining whether rates for electric power should be increased, properly treated the business of the company as a single enterprise and refused to segregate properties or allocate costs attributable to the part of the business done in the District of Columbia. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

Extensions

A motor lines company which operated bus lines under routes the effect of which was to provide direct passenger service to downtown Washington, D. C., or by connecting carrier to any part of Washington, D. C., was entitled to such notice of hearing conducted by Public Utilities Commission of District of Columbia, relative to whether routes of another bus company operating in area should be extended, as would afford such motor lines reasonable opportunity to protect any of its interests which might be involved, and mere presence of employee of motor lines at such hearing did not meet requirement of reasonable notice, nor did posting of notice in District building. *Washington, Marlboro & Annapolis Motor Lines, Inc.* v. *Public Utilities Commission of District of Columbia* (D.C.D.C. 1953, 114 F. Supp. 321).

Findings

Whatever formula is adopted by District of Columbia Public Utilities Commission for gas rate purposes, the commission's findings must be based on substantial evidence in the record. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

Hearing, sufficiency of

The District of Columbia Public Utilities Commission's statement that return of less than four per cent was inadequate to maintain gas company in sound financial condition was insufficient to support commission's conclusion that gas rates were reasonable, just and nondiscriminatory, where the commission adopted prudent investment theory of rate regulation but did not subject issue of rate of return to inquiry at the hearing. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

Increase in rates

Evidence sustained orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

Reasonableness of rates

Gas rates fixed by Public Utilities Commission of District of Columbia, to be valid, must enable company to operate successfully, to maintain its financial integrity to attract capital, and to compensate its investors for risks assumed. *Washington Gas Light Co.* v. *Public Utilities Commission of District of Columbia* (D.C.D.C. 1944, 55 F. Supp. 627).

§ 43–412. Expenses of investigation or revaluation to be borne by utility—Deposit for costs—Limitation of expenditures in rate and revaluation hearings.

The expenses of any investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission of or concerning any public utility operating in the District of Columbia, and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding, or from any order or action of the said commission, shall be borne by the public utility investigated, valued, revalued, or otherwise affected as a special franchise tax in addition to all other taxes imposed by law, and such expenses with interest at 6 per centum per annum may be charged to operating expenses and amortized over such period as the Public Service Commission shall deem proper and be allowed for in the rates to be charged by such utility. When any such investigation, valuation, revaluation, or other proceeding is begun the said Public Service Commission may call upon the utility in question for the deposit of such reasonable sum or sums as in the opinion of said commission, it may deem necessary from time to time until the said proceeding or the litigation arising therefrom is completed, the money so paid to be deposited in the treasury of the United States to the credit of the appropriation account known as "miscellaneous trust fund deposit, District of Columbia" and to be disbursed in the manner provided for by law for other expenditures of the government of the District of Columbia, for such purposes as may be approved by the Public Service Commission. Any unexpended balance of such sum or sums so deposited shall be returned to the utility depositing the same: *Provided*, That the amount expended by the commission in any valuation or rate case shall not exceed one-half of 1 per centum of the existing valuation of the company investigated, and that the amount expended in all other investigations shall not exceed one-tenth of 1 per centum of the existing valuation for any one company for any one year. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 42; Mar. 3, 1927, 44 Stat. 1351, ch. 304; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 3; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

CODIFICATION

Act Aug. 27, 1935, consolidated paragraphs 42 and 42a of act Mar. 4, 1913, and redesignated them as paragraph 42.

AMENDMENT

1935—Act Aug. 27, 1935, added the following: "and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding, or from any order or action of the said commission," in the first sentence.

CHANGE OF NAME

Section 21 of act, Aug. 30, 1964, Pub. L. 88–503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See section 2–2418.

SEPARABILITY PROVISION

For separability provision of act Aug. 27, 1935, see § 43–711.

CROSS REFERENCES

Investigation and valuations, see § 43–305 et seq.
Rate making generally, see § 43–401.

NOTES TO DECISIONS

Payment of expenses

Later statute requiring utility to bear expenses of investigation or revaluation by Public Utilities Commission prevails over a previous statute which requires a utility to pay expenses only where utility is at fault. *Washington R. & Elec. Co.* v. *District of Columbia* (1935, 77 F. 2d 366, 64 App. D. C. 243).

§ 43–413. Separate hearings on complaints—Complaints not to be dismissed because of absence of direct damage.

The commission may, in its discretion, when complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at such times as it may prescribe. No complaint shall of necessity at any time be dismissed because of the absence of direct damage to the complainant. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 43.)

§ 43–414. Summary investigation.

Whenever the commission shall believe that any rate or charge may be unreasonable or unjustly discriminatory, or that any reasonable service is not supplied, or that an investigation of any matter relating to any public utility should for any reason be made, it may, on its own motion, summarily investigate the same with or without notice. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 44.)

NOTES TO DECISIONS

In general

Where suit by transit company against carrier to obtain injunction against certain competitive bus operations alleged to be illegal, presented both judicial and administrative questions, but administrative action might be determinative of entire controversy, transit company would be required to exhaust its available administrative remedies before seeking injunctive relief. *Capital Transit Co.* v. *Safeway Trails, Inc.* (1953, 201 F. 2d 708, 92 U. S. App. D. C. 20).

§ 43–415. Hearings after summary investigation.

If after making such investigation the commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters so investigated, it shall furnish such public utility interested a statement notifying the public utility of the matters under investigation. Ten days after such notice has been given the commission may proceed to set a time and place for a hearing and an investigation as hereinbefore provided. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 45.)

§ 43–416. Notice of hearing—Hearing to be conducted as though complaint had been filed.

Notice of the time and place for such hearing shall be given to the public utility and to such other interested persons as the commission shall deem necessary, as provided in section 43–410, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the commission relative to the matter investigated, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 46.)

§ 43–417. Utility may make complaint.

Any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by the commissioner or upon reasonable complaint as hereinbefore provided. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 47.)

NOTES TO DECISIONS

Administrative remedy, exhaustion of

Where suit by transit company against carrier to obtain injunction against certain competitive bus operations alleged to be illegal, presented both judicial and administrative questions, but administrative action might be determinative of entire controversy, transit company would be required to exhaust its available administrative remedies before seeking injunctive relief. *Capital Transit Co.* v. *Safeway Trails, Inc.* (1953, 201 F. 2d 708, 92 U. S. App. D. C. 20).

§ 43–418. Commissioners and agents may administer oaths, issue subpoenas—Proceeding to punish for contempt.

Each of the commissioners and every agent provided for in section 43–406, for the purposes mentioned in chapters 1–10 of this title, shall have power to administer oaths, certify to official acts, issue subpœnas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents, and testimony. In case of disobedience on the part of any person or persons to comply with any order of the commission or any commissioner, or any subpœna, or on the refusal of any witness to testify to any matter regarding which he may be interrogated before the commission or its agent authorized, it shall be the duty of the United States District Court for the District of Columbia, or a judge thereof, on application of a commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpœna issued from such court or a refusal to testify therein. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 48; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 43–419. Witness fees.

Each witness who shall appear before the commission or its agent by its order shall receive for his attendance the fees and mileage provided for witnesses in the United States District Court for the District of Columbia on March 4, 1913, which shall be audited and paid in the same manner as fees in criminal cases within the District of Columbia are audited and paid, upon the presentation of proper vouchers, sworn to by such witnesses and approved by the chairman of the commission. No witnesses subpœnaed at the instance of parties other than the commission shall be entitled to compensation for attendance or travel unless the commission shall certify that his testimony was material to the matter investigated, and that his attendance as a witness was reasonably necessary. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 49; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 43–420. Testimony may be taken by deposition.

The commission or any party may, in any investigation, cause the depositions of witnesses residing within or without the District of Columbia to be taken in the manner prescribed by law for like depositions in civil actions in District Courts. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 50.)

§ 43–421. Record of proceedings to be kept—Testimony to be taken stenographically.

A full and complete record shall be kept of all proceedings had before the commission or its agents on any formal investigation had, and all testimony shall be taken down by a stenographer appointed by the commission. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 51.)

§ 43–422. Transcript of evidence or proceedings, certified by stenographer, to be received in evidence—Copy of transcript to be furnished without cost.

A transcribed copy of the evidence and proceedings, or any specific part thereof, in any investigation taken by a stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript of all the testimony in the investigation or of a particular witness, or of other specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had in such investigation so purporting to be taken and transcribed, shall be received in evidence with the same effect as if such reporter were present and testified to the fact so certified. A copy of such transcript shall be furnished on demand, free of cost, to any party to such investigation. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 53.)

Chapter 5.—SALE AND MERGER OF UTILITIES

Sec.

43–501. Assignment of franchise—Acquisition of stocks and bonds of competing utilities.
43–502. Antimerger law.
43–503. Merger of street railways permitted.

§ 43–501. Assignment of franchise—Acquisition of stocks and bonds of competing utilities.

No franchise nor any right to or under any franchise to own or operate any public utility as defined in chapters 1–10 of this title or to use the tracks of any street railroad shall be assigned, transferred, or leased, nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer, lease, contract, or agreement shall have been approved by the commission in writing. The permission and approval of the commission to the assignment, transfer, or lease of a

franchise under this section shall not be construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture. It shall be unlawful for any street railroad corporation, gas corporation, electric corporation, telephone corporation, telegraph corporation, or other public utility corporation, directly or indirectly, to acquire the stock or bonds of any other corporation incorporated for or engaged in the same or similar business as it is, unless authorized in writing to do so by the commission, and every contract, transfer, agreement for transfer or assignment of any such stock or bonds without such written authority shall be void and of no effect. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 54.)

CROSS REFERENCES

Constitutionality of act, see § 43–1003.
Criminal penalties, see §§ 43–906 to 43–908.
Liberal construction of act, see § 43–1003.
Other provisions concerning reorganization or consolidation of companies, issuance of stock, see § 43–805.
Saving clauses, see §§ 43–1005, 43–1006.

NOTES TO DECISIONS

Purchase of other companies

Under authority of this paragraph, the Washington Gas Light Company was granted permission by the Public Utilities Commission to purchase the stocks and bonds of various other gas-light companies. *Washington Gas Light Co.* v. *Dann* (1934, 70 F. 2d 746, 63 App. D. C. 142).

§ 43–502. Antimerger law.

It shall be unlawful for any foreign public utility corporation, or for any foreign or local holding corporation, or for any local street railroad corporation, gas corporation, electric corporation, telephone corporation, telegraph corporation, or any other local public utility corporation, directly or indirectly, to own, control, or hold or vote stock or bonds of any public utility corporation organized under any general incorporation law or special Act of the United States or authorized under any law of the United States to do business in the District of Columbia, except as heretofore or hereafter expressly authorized by Congress; and it shall be unlawful for any public utility corporation organized or authorized as aforesaid to sell or transfer any portion of its stock or bonds to any other public utility corporation or holding corporation whatsoever, unless heretofore or hereafter expressly authorized by Congress so to do; and every contract, transfer, agreement to transfer, or assignment by any said public utility corporation organized or authorized as aforesaid of any portion of its stock or bonds without such authority shall be utterly void and of no effect. The United States District Court for the District of Columbia, on application of the District of Columbia by its commissioners or attorney, or on application of the United States by its proper officer, or on application of any shareholder interested in any such corporations, shall have jurisdiction in equity to dissolve any public utility corporation organized under any general incorporation law or special section[1] of the United States, or authorized under any law of the United States to do business in the District of Columbia, for violation of any of the provisions of this section or of their charters; and further, to require any foreign public utility corporation, or foreign or local holding corporation which owns, holds, or controls, or which shall hereafter own, hold, or control any such stock or bonds contrary to any of the provisions of this section, to sell or dispose of the same and to refrain from voting such stock or bonds: *Provided,* That in case the allegations in any bill filed in said court relate to the ownership of stock or bonds of a local corporation by any foreign corporation, then it must be shown to the satisfaction of the court that such ownership includes at least twenty per centum of the capital stock of the local corporation.

The inhibitions and restrictions contained in this section are hereby removed, so far and only so far, as they affect the acquisition by any corporation of the stocks or bonds of any of the corporations referred to in section 43–503: *Provided,* Congress reserves the right to alter, amend, or repeal this paragraph of this section.

The word "foreign" when used in this section shall be construed to mean foreign to the District of Columbia, and the word "local" when used in this section shall be construed to mean local in the District of Columbia.

Each provision of this section and every part of each provision is hereby declared to be an independent provision, and the holding of any provision or provisions, or part or parts thereof, to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other provision or part thereof. (Mar. 4, 1913, 37 Stat. 1006, ch. 150, § 11; Mar. 4, 1925, 43 Stat. 1265, ch. 527, §§ 2, 3; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1925—Act Mar. 4, 1925, provided that the inhibitions and restrictions in this section are thereby removed so far, and only so far, as they affect the acquisition by any corporation of the stocks or bonds of any of the corporations approved by Public Utilities Commission, and Congress also reserved the right to alter, amend, or repeal this act or any provision thereof.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCE

Reorganization or consolidation, issuance of stock, see § 43–805.

NOTES TO DECISIONS

Evidence

In electric rate proceeding, an exhibit which allegedly contained information purporting to show that the holding companies owning common stock of the electric company involved were engaged in conspiracy to violate this section was properly excluded, since the Public Utilities Commission was justified in refusing to take into account the collateral issues posed by the tendered exhibit. *United States* v. *Public Utilities Commission of District of Columbia* (1947, 158 F. 2d 533, 81 U. S. App. D. C. 237, certiorari denied 67 S. Ct. 1305, 331 U. S. 816, 91 L. Ed. 1835).

[1] So in original. Probably should read "Act."

§ 43–503. Merger of street railways permitted.

Any or all of the street railway companies operating in the District of Columbia are hereby authorized and empowered to merge or consolidate, either by purchase or lease by one company of the properties, and/or stocks or securities of any of the others, or by the formation of a new corporation to acquire the properties and/or stocks or securities and to succeed to the powers and obligations of each or any of said companies under such terms and conditions as may be agreed upon by a vote of a majority in amount of the stock of the respective corporations and as may be approved by the Public Service Commission of the District of Columbia: *Provided,* That no merger of said companies shall be finally consummated until the same is approved by a joint resolution of Congress. Such new corporation shall be incorporated under the provisions of chapter 2 of title 29 of this Code, as far as applicable, with issues of stock at a stated par value and/or of no par value, as may be approved by the Public Service Commission. Congress reserves the right to alter, amend, or repeal this section or any provision thereof. (Mar. 4, 1925, 43 Stat. 1265, ch. 527, §§ 1, 3; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

REFERENCES IN TEXT

Formation of corporation under the provisions of chapter 2 of title 29 of this code, referred to in the text, has reference to incorporation under business corporation provisions of act Mar. 3, 1901, 31 Stat. 1284, ch. 854, subch. 4. Formation of corporations under the provisions of the District of Columbia Business Corporation Act one hundred and eighty days after June 8, 1954, and prohibition against incorporation, after such date, under any other act or statute then in force, see effective date note set out under section 29–901.

CHANGE OF NAME

Section 21 of act, Aug. 30, 1964, Pub. L. 88–503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See section 2–2418.

STREETCAR MERGER

Paragraph "Second" of the preamble of the joint resolution to authorize merger of street-railway corporations operating in the District of Columbia, approved Jan. 14, 1933, 47 Stat. 753, ch. 10, § 1, as amended Feb. 16, 1933, 47 Stat. 819, ch. 94, § 1, read as follows:

"Second. The New Company shall be incorporated under the provisions of subchapter IV of chapter XVIII of the Code of Law of the District of Columbia (see reference in text under this section) and pursuant to an act of Congress entitled 'An Act to permit the merger of street-railway corporations operating in the District of Columbia, and for other purposes', approved March 4, 1925, with power subject to the approval of the Public Utilities Commission to acquire, construct, own, and operate directly transit properties within the District of Columbia and either directly or through subsidiaries in adjacent States, including the power to acquire, own, and operate the properties to be conveyed to the New Company in accordance with this agreement, and to acquire and own the stock and/or bonds of said companies and of any other company or companies engaged in the transportation of passengers by street railway or bus in the District of Columbia and adjacent States with the power to mortgage its property rights, and franchises, and to conduct such other activities as may be useful or necessary in connection with or incident to the foregoing purposes, including the power to buy, sell, hold, own, and convey real estate within and without the District of Columbia. Said New Company when incorporated shall become and remain subject in all respects to regulation by the Public Utilities Commission of the District of Columbia or its successors to the extent of the jurisdiction now or hereafter vested in it or them by law over corporations engaged in the transportation of passengers by street railway or bus within the District of Columbia: *Provided,* That before they are recorded, the articles of incorporation and/or any amendments thereto shall be approved by the Public Utilities Commission.

"SEC. 2. That Congress hereby expressly reserves the right to alter, amend, or repeal this resolution."

CROSS REFERENCES

Competing lines, restrictions, see § 44–201.

Reorganization or consolidation, issuance of stock, see § 43–805.

Chapter 6.—GAS AND ELECTRIC CORPORATIONS

Sec.

43–601. Public Service Commission—General powers.
43–602. Approval of construction of gas or electric plant.
43–603 Inspectors of gas and electric meters—Inspection of meters—Commission to make rules and regulations.
43–604. Excessive charges to defeat suit to collect for gas or electricity furnished.
43–605. Appointment and removal of inspectors and assistant inspectors of gas and meters.
43–606 Inspector of gas and meters to transfer books to Commission.

§ 43–601. Public Service Commission—General powers.

The commission shall, within its jurisdiction—

Have general supervision of all gas corporations and electrical corporations having authority under any general or special law or under any charter or franchise to lay down, erect, or maintain wires, pipes, conduits, ducts, or other fixtures in, over, or under the streets, highways, and public places in the District of Columbia for the purpose of furnishing or distributing gas or of furnishing or transmitting electricity for light, heat, or power, or maintaining underground conduits or ducts for electrical conductors, and all gas plants and electric plants owned, leased, or operated by any corporation.

Investigate and ascertain, from time to time, the quality and quantity of gas supplied by persons or corporations; examine or investigate the methods employed by such persons and corporations in manufacturing, distributing, and supplying gas or electricity for light, heat, or power, and in transmitting the same, and have power to order such reasonable improvements as will reasonably promote the public interest, preserve the public health, and protect those using such gas or electricity and those employed in the manufacture and distribution thereof or in the manufacture and operation of the works, wires, poles, lines, conduits, ducts, and systems connected therewith, and have power to order reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts, and other reasonable devices, apparatus, and property of gas corporations and electrical corporations.

Have power by order to fix from time to time standards for determining the purity or the measurement of the illuminating power of gas to be manufactured, distributed, or sold by persons or corporations for lighting, heating, or power purposes, and to prescribe from time to time the efficiency of the electric supply system, of the current supplied, and of the lamps furnished by the persons or corporations generating and selling electric current, and by order to require the gas so manufactured, distributed, or sold to equal the standards so fixed by it, and

to prescribe from time to time the reasonable minimum and maximum pressure at which gas shall be delivered by said persons or corporations. For the purpose of determining whether the gas manufactured, distributed, or sold by such persons or corporations for lighting, heating, or power purposes conforms to the standards of illuminating power, purity, and pressure, and for the purpose of determining whether the efficiency of the electric supply system, of the current supplied, and of the lamps furnished conforms to the orders issued by the commission, the commission shall have power, of its own motion, to examine and investigate the plants and methods employed in manufacturing, delivering, and supplying gas or electricity, and shall have access, through its members or persons employed and authorized by it to make such examinations and investigations, to all parts of the manufacturing plants owned, used or operated for the manufacture, transmission, or distribution of gas or electricity by any such person or corporation. Any employee or agent of the commission who divulges any fact or information which may come to his knowledge during the course of any such inspection or examination, except in so far as he may be directed by the commission, or by a court or judge thereof, or authorized by law, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than $50 nor more than $500 for each offense. (Mar. 4, 1913, 37 Stat. 986, ch. 150, § 8, par. 55.)

CROSS REFERENCES

Constitutionality of act, see § 43–1003.
Criminal penalties generally, see §§ 43–906, 43–907.
Disposition of fines and forfeitures, see § 43–912.
Fees for testing meters or measuring devices, see § 43–321.
General provisions for testing meters and quality of product, rules and regulations, see § 43–320.
Investigation of personal injuries or deaths occurring from operation of utility, see § 43–1001.
Liberal construction of act, see § 43–1003.
Penalties provided by this section do not bar prosecution under other laws, see § 43–913.
Saving clauses, see §§ 43–1005, 43–1006.
Special provisions concerning electric and gas companies, see §§ 43–1101 to 43–1108, 43–1201 to 43–1207.

§ 43–602. Approval of construction of gas or electric plant.

No gas corporation or electrical corporation shall begin the construction of a gas plant or electric plant without first having obtained the permission and approval of the commission. (Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 56.)

§ 43–603. Inspectors of gas and electric meters—Inspection of meters—Commission to make rules and regulations.

The commission shall appoint inspectors of gas meters, whose duty it shall be, when required by the commission, to inspect, examine, prove, and ascertain the accuracy of any and all gas meters used or intended to be used for measuring or ascertaining the quantity of gas for light, heat, or power furnished by any person or corporation to or for the use of any person or corporation, and when found to be or made to be correct, the inspector shall seal all such meters and each of them with some suitable device, which device shall be recorded in the office of the commission.

No corporation or person shall furnish, set, or put in use any gas meter which shall not have been inspected, proved, and sealed by an inspector of the commission.

The commission shall appoint inspectors of electric meters, whose duty it shall be, when required by the commission, to inspect, examine, and ascertain the accuracy of any and all electric meters used or intended to be used for measuring and ascertaining the quantity of electric current furnished for light, heat, or power by any person or corporation to or for the use of any person or corporation, and to inspect, examine, and ascertain the accuracy of all apparatus for testing and proving the accuracy of electric meters; and when found to be or made to be correct the inspector shall stamp or mark all such meters and apparatus with some suitable device, which device shall be recorded in the office of the commission. No corporation or person shall furnish, set, or put in use any electric meter the type of which shall not have been approved by the commission or any meter not approved by an inspector of the commission.

Every gas corporation and electrical corporation shall provide, repair, and maintain such suitable premises and apparatus and facilities as may be required and approved by the commission for testing and proving the accuracy of gas and electric meters furnished for use by it, and by which apparatus every meter may be tested.

If any consumer to whom a meter has been furnished shall request the commission in writing to inspect such meter, the commission shall have the same inspected and tested; if the same, on being so tested, shall be found to be more than two per centum defective or incorrect to the prejudice of the consumer, the inspector shall order the gas or electrical corporation forthwith to remove the same and to place instead a correct meter, and the expense of such inspection and test shall be borne by the corporation; if the same, on being so tested, shall be found to be correct, the expense of such inspection and test shall be borne by the consumer.

The commission shall prescribe such rules and regulations to carry into effect the provisions of this section as it may deem necessary and shall fix uniform reasonable charges for the inspection and testing of meters upon complaint. (Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 57; Apr. 5, 1939, 53 Stat. 568, ch. 38.)

AMENDMENT

1939—Act Apr. 5, 1939, deleted the words "four per centum, if an electric meter, or more than" in the fifth paragraph following the word "than" the first time it appears, and the words "if a gas meter" following the words "two per centum" where they appear in said paragraph.

CROSS REFERENCES

Laboratory for inspector of gas and meters, see §§ 43–1201, 43–1202.
Rules and regulations generally, see § 43–202.

§ 43–604. Excessive charges to defeat suit to collect for gas or electricity furnished.

If it be alleged and established in an action brought in any court for the collection of any charge for gas or electricty that a price has been demanded in excess of that fixed by the commission or by statute

no recovery shall be had therein, but the fact that such excessive charges have been made shall be a complete defense to such action. (Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 58.)

CROSS REFERENCES

Cutting off gas for failure to pay charges, see § 43–1205.

§ 43–605. Appointment and removal of inspectors and assistant inspectors of gas and meters.

A suitable and impartial person, competent as a chemist, who is not a stockholder or employee in any gas works, shall be appointed by the Public Service Commission to be designated and known as inspector of gas and meters, whose duties shall be to test and determine the illuminating power and purity of the gas furnished by any company, person, or persons in the District of Columbia; and to test, prove, and seal all meters that may be hereafter used by them. The inspector shall give bond to the extent of double his annual salary, and shall take an oath or affirmation, before some officer legally qualified to administer the same, that he will faithfully, diligently, and impartially discharge the duties of his office. The appointment and power to remove the inspector of gas and meters and assistant inspectors of gas and meters from office is hereby vested in the commission. All the powers and duties of such inspectors conferred and imposed by statute shall be exercised and performed under the supervision and control of the commission. (June 23, 1874, 18 Stat. 278, 279, ch. 480, §§ 2, 10; Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 59; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

CODIFICATION

Section consolidates sections 2 and 10 of act June 23, 1874, and par. 59 of section 8 of act Mar. 4, 1913.

CHANGE OF NAME

Section 21 of act, Aug. 30, 1964, Pub. L. 88–503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See section 2–2418.

§ 43–606. Inspector of gas and meters to transfer books to Commission.

The inspector of gas and meters provided for by law prior to March 4, 1913, shall transfer and deliver to the commission all books, maps, papers, records, apparatus, and the property of whatsoever description in his possession, and said commission is authorized to take possession of all books, maps, papers, records, apparatus, and property of whatsoever description. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 60.)

Chapter 7.—ORDERS AND COURT PROCEEDINGS

Sec.
43–701. Schedules to conform to orders of Commission—Changes in schedules to be first approved by Commission.
43–702. Commission may rescind, alter, or amend orders fixing rates.
43–703. Rates to be in force and to be prima facie reasonable.
43–704. Application to District Court for instructions—Application for reconsideration.
43–705 Appeal to District Court from certain orders—Precedence over other civil causes—Proceeding when additional evidence proper—Statement to accompany decision—Subsequent appeals—Commission not liable for costs or damages.
43–706. Appeal limited to questions of law.
43–707. Orders to remain in force pending appeal—Suspension of order.
43–708. Certification of question to United States Court of Appeals.
43–709. Authority of Commission to rescind its order after appeal is filed.
43–710. Method of review exclusive.
43–711. Separability of provisions.
43–712. Production of incriminating evidence compellable, immunity from prosecution.
43–713. Commission to furnish certified copies of orders.

§ 43–701. Schedules to conform to orders of Commission—Changes in schedules to be first approved by Commission.

All public utilities to which an order of the commission applies shall make such changes in their schedules on file as may be necessary to make the same conform to said order, and no change shall thereafter be made by any public utility in any such rates, tolls, or charges, or in any joint rate or rates, without the approval of the commission. Certified copies of all other orders of the commission shall be delivered to the public utility affected thereby in like manner, and the same shall take effect within such reasonable time thereafter as the commission shall prescribe. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 61.)

CROSS REFERENCES

Certified copies, effect as evidence, see § 43–713.
Constitutionality of act, see § 43–1003.
General penal provisions, see §§ 43–906 to 43–908.
Liberal construction of act, see § 43–1003.
Other provisions concerning changes of rates and schedules, see §§ 43–323 to 43–328.
Rates and rate making, see § 43–401.
Saving clauses, see §§ 43–1005, 43–1006.

§ 43–702. Commission may rescind, alter, or amend orders fixing rates.

The commission may, at any time, upon notice to the public utility and after opportunity to be heard as provided in section 43–410, rescind, alter, or amend any order fixing any rate or rates, tolls, charges, or schedules, or any other order made by the commission, and certified copies of the same shall be served and take effect as herein provided for original orders. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 62.)

CROSS REFERENCES

Pending appeal, see § 43–709.
Power of Commission to alter unreasonable or discriminatory rates, see § 43–911.

§ 43–703. Rates to be in force and to be prima facie reasonable.

All rates, tolls, charges, time and condition of payment thereof, schedules, and joint rates fixed by the commission shall be in force and shall be prima facie reasonable until finally found otherwise in an action brought for that purpose. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 63.)

§ 43–704. Application to District Court for instructions—Application for reconsideration.

If at any time the commission shall be in doubt of the elements of value to be by them considered in arriving at the true valuation under the provisions of chapters 1–10 of this title, they are authorized and empowered to institute a proceeding in equity in the United States District Court for the District of

Columbia petitioning said court to instruct them as to the element or elements of value to be by them considered as aforesaid, and the particular utility under valuation at the time shall be made party defendant in said action.

Any public utility or any other person or corporation affected by any final order or decision of the commission may, within thirty days after the publication thereof, file with the commission an application in writing requesting a reconsideration of the matters involved, and stating specifically the errors claimed as grounds for such reconsideration. No public utility or other person or corporation shall in any court urge or rely on any ground not so set forth in said application. The commission, within thirty days after the filing of such application, shall either grant or deny it. Failure by the commission to act upon such application within such period shall be deemed a denial thereof. If such application be granted, the commission, after giving notice thereof to all interested parties, shall, either with or without hearing, rescind, modify, or affirm its order or decision. The filing of such an application shall act as a stay upon the execution of the order or decision of the Commission until the final action of the Commission upon the application: *Provided,* That upon written consent of the utility such order or decision shall not be stayed unless otherwise ordered by the Commission. No appeal shall lie from any order of the Commission unless an application for reconsideration shall have been first made and determined. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 64; Aug. 27, 1935, 49 Stat. 882, ch. 742, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1935—Act Aug. 27, 1935, amended section generally, and among other changes, eliminated provisions for commencement of proceedings in equity in Supreme Court of District by persons dissatisfied with orders or decisions of the commission, preference of such actions over any other civil action, appeal from decisions of court, suspension by commission of decision or order pending appeal, prohibition of taxation of costs against commission and liability for damage, loss, or injury, and substituted therefore provisions for filing application in writing with commission requesting reconsideration of final order or decision, such filing to act as stay of order or decision until final action of commission upon the application, and determination of application as prerequisite to appeal.

Provisions for appeal, prohibition against taxation of costs and for liability of commission for damage or injury, and precedence of cases are contained in section 43–705.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCE

Valuation, see § 43–305 et seq.

NOTES TO DECISIONS

Agreement not to resell product

Utility may require agreement from user not to remeter and resell current. *Lewis* v. *Potomac Elec. Power Co.* (1933, 64 F. 2d 701, 62 App. D. C. 63).

Application or petition for reconsideration

Petition of motor lines company which operated bus lines under routes the effect of which was to provide direct passenger service to downtown Washington, D. C., or by connecting carrier to any part of Washington, D. C., for reconsideration by Public Utilities Commission of order which extended lines of another bus company which operated in area, was sufficient to comply with section of District Code permitting public utility affected by order of Commission to apply for reconsideration, as against contention that petition was insufficient and that therefore motor lines had not exhausted administrative remedies and could not seek relief in court. *Washington, Marlboro & Annapolis Motor Lines, Inc.* v. *Public Utilities Commission of District of Columbia* (D.C.D.C. 1953, 114 F. Supp. 321).

Where first order of the Public Utilities Commission of the District of Columbia in proceedings for increase of rates for electric power was in effect an interlocutory order formulating merely principles on which new rate schedules should be prescribed, and second order prescribing actual rates was the final order, petition for reconsideration filed within 30 days of second order, though not filed within 30 days of first order, sufficiently complied with statutory requirement that in order to be qualified to appeal from an order of the commission party claiming to be aggrieved must make an application to commission for reconsideration within 30 days after publication of its final order or decision. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

Complaint and hearing

A formal complaint and hearing before the Commission are not necessary conditions precedent to a suit in equity. *Hollis* v. *Kutz* (1921, 41 S. Ct. 371, 255 U. S. 452, 65 L. Ed. 727).

Costs on appeal

Appeal taken by the Public Utilities Commission from the order of the District Court of the United States for the District in a rate case was an administrative proceeding and the costs of printing the record and the brief of the Commission upon the appeal were expenses of the proceeding, although the appeal wherein these expenses were incurred was dismissed as a result of changed conditions. *Washington R. & Elec. Co.* v. *District of Columbia* (1935, 77 F. 2d 366, 64 App. D. C. 243).

Exhaustion of administrative remedy

Petition of motor lines company which operated bus lines under routes the effect of which was to provide direct passenger service to downtown Washington, D.C., or by connecting carrier to any part of Washington, D.C., for reconsideration by Public Utilities Commission of order which extended lines of another bus company which operated in area, was sufficient to comply with this section permitting public utility affected by order of Commission to apply for reconsideration, as against contention that petition was insufficient and that therefore motor lines had not exhausted administrative remedies and could not seek relief in court. *Washington, Marlboro & Annapolis Motor Lines, Inc.* v. *Public Utilities Commission of District of Columbia* (D.C.D.C. 1953, 114 F. Supp. 321).

Legislative intent

Congress intended that the court shall revise the legislative discretion of the Commission by considering the evidence and full record of the case and entering the order it deems the Commission ought to have made. *Keller* v. *Potomac Elec. Power Co.* (1923, 43 S. Ct. 445, 261 U. S. 428, 67 L. Ed. 731).

§ 43–705. Appeal to District Court from certain orders—Precedence over other civil causes—Proceeding when additional evidence proper—Statement to accompany decision—Subsequent appeals—Commission not liable for costs or damages.

The United States District Court for the District of Columbia shall have jurisdiction to hear and determine any appeal from an order or decision of the Commission. Any public utility or any other

person or corporation affected by any final order or decision of the Commission, other than an order fixing or determining the value of the property of a public utility in a proceeding solely for that purpose, may, within sixty days after final action by the Commission upon the petition for reconsideration, file with the clerk of the United States District Court for the District of Columbia a petition of appeal setting forth the reasons for such appeal and the relief sought; at the same time such appellant shall file with the Commission notice in writing of the appeal together with a copy of the petition. Within twenty days of the receipt of such notice of appeal the Commission shall file with the clerk of the said court the record, including a transcript of all proceedings had and testimony taken before the Commission, duly certified, upon which the said order or decision of the Commission was based, together with a statement of its findings of fact and conclusions upon the said record, and a copy of the application for reconsideration and the orders entered thereon: *Provided,* That the parties, with the consent and approval of the Commission, may stipulate in writing that only certain portions of the record be transcribed and transmitted. Within this period the Commission or any other interested party shall answer, demur, or otherwise move or plead. Thereupon the appeal shall be at issue and ready for hearing. All such proceedings shall have precedence over any civil cause of a different nature pending in said court, and the United States District Court for the District of Columbia shall always be deemed open for the hearing thereof. Any such appeal shall be heard upon the record before the Commission, and no new or additional evidence shall be received by the said court. The said court, or any judge or judges thereof, before whom any such appeal shall be heard, may require and direct the Commission to receive additional evidence upon any subject related to the issues on said appeal concerning which evidence was improperly excluded in the hearing before the Commission or upon which the record may contain no substantial evidence. Upon receipt of such requirement and direction the Commission shall receive such evidence and without unreasonable delay shall transmit to the said court the findings of fact made thereon by the Commission and the conclusions of the Commission upon the said facts.

Upon the conclusion of its hearing of any such appeal the court shall either dismiss the said appeal and affirm the order or decision of the Commission or sustain the appeal and vacate the Commission's order or decision. In either event the court shall accompany its order by a statement of its reasons for its action, and in the case of the vacation of an order or decision of the Commission the statement shall relate the particulars in and the extent to which such order or decision was defective.

Any party, including said Commission, may appeal from the order or decree of said court to the United States Court of Appeals for the District of Columbia, which shall thereupon have and take jurisdiction in every such appeal. Thereafter the Supreme Court of the United States may, upon a petition for certiorari granted in its discretion, review the said case.

Said Commission shall not, nor shall any of its members, officers, agents, or employees, be taxed with any costs, nor shall they or any of them be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said Commission, or any of its members, officers, agents, or employees, shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any public utility or person, nor required in any case to make any deposit for costs or pay for any service to the clerks of any court or to the marshal of the United States. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 65; Aug. 27, 1935, 49 Stat. 882, ch. 742, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1935—Act Aug. 27, 1935, amended section generally. Prior to such amendment, section provided: "That every proceeding, action, or suit to set aside, vacate, or amend any determination or order of the Commission, or to enjoin the enforcement thereof, or to prevent in any way any such order or determination from becoming effective shall be commenced, and every appeal to the courts or right of recourse to the courts shall be taken or exercised, within one hundred and twenty [120] days after the entry or rendition of such order or determination, and the right to commence any such action, proceeding, or suit, or to take or exercise any such appeal or right of recourse to the courts, shall terminate absolutely at the end of such one hundred and twenty days."

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", "judge" for "justice" and "judges" for "justices."

NOTES TO DECISIONS

In general

Administrative determinations which are not commands may for all practical purposes determine rights as effectively as the judgment of a court, and may be reexamined by courts under particular statutes providing for the review of "orders". *Pollak et al.* v. *Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

Ordinarily, in determining electric power rate, question whether smaller unit of electric power should be used as a basis for rate making is a matter of discretion for the regulatory agency. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

"Affected", definition

Where order of the Public Utilities Commission authorized District of Columbia transit company to use radio loudspeakers in its vehicles, persons who used the services of the transit and intervened before the Commission were "affected by" the Commission's order and could appeal. *Pollak et al.* v. *Public Utilities Commission of District of Columbia et al.* (1951, 191 F. 2d 450, 89 U.S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

The word "affected", as used in this section was chosen by Congress to expand the privilege of complaint and appeal beyond that contemplated by words it used in other statutes, and beyond the conventional tests used in equity suits seeking restraint of governmental action. *U. S.* v. *Public Utilities Commission of District of Columbia* (1945, 151 F. 2d 609, 80 U. S. App. D. C. 227).

Application for reconsideration

Where first order of the Public Utilities Commission of the District of Columbia in proceedings for increase of

rates for electric power was in effect an interlocutory order formulating merely principles on which new rate schedules should be prescribed, and second order prescribing actual rates was the final order, petition for reconsideration filed within 30 days of second order, though not filed within 30 days of first order, sufficiently complied with statutory requirement that in order to be qualified to appeal from an order of the commission party claiming to be aggrieved must make an application to commission for reconsideration within 30 days after publication of its final order or decision. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

Burden of proof

Though the burden of proof was upon the party contesting a finding of the Commission, the court must exercise its own judgment where challenged for a mistake of law, failure of evidence or contrary to weight of evidence. *Potomac Elec. Power Co.* v. *Public Utilities Comm.* (1922, 276 F. 327, 51 App. D. C. 77).

Evidence to support findings

When supported by substantial evidence, Public Utilities Commission's choice between two conflicting views will not be disturbed, even though court might justifiably have reached a different conclusion had the matter been before it de novo. *Washington, Marlboro & Annapolis Motor Lines, Inc.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1953, 114 F. Supp. 328, affirmed 206 F. 2d 490).

Evidence sustained orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

Where Public Utilities Commission's witness found that investors' appraisal of return required on common stock capital of gas company was 11.68 percent, and company's witnesses fixed it at 10.98 percent, both exclusive of cost of financing, and earnings-price ratio of companies involved to which Commission's witness testified was 10.54 percent, Commission's action in substituting 9 percent as a reasonable allowance in fixing rates and in amending sliding scale order so as to reduce primary rate of return from 6½ percent to 5¾ percent, was void, as not supported by substantial evidence. *Washington Gas Light Co.* v. *Public Utilities Commission of District of Columbia* (D.C.D.C. 1944, 55 F. Supp. 627).

Exhaustion of administrative remedy

Petition of motor lines company which operated bus lines under routes the effect of which was to provide direct passenger service to downtown Washington, D. C., or by connecting carrier to any part of Washington, D. C., for reconsideration by Public Utilities Commission of order which extended lines of another bus company which operated in area, was sufficient to comply with section 43–704 permitting public utility affected by order of Commission to apply for reconsideration, as against contention that petition was insufficient and that therefore motor lines had not exhausted administrative remedies and could not seek relief in court. *Washington, Marlboro & Annapolis Motor Lines, Inc.* v. *Public Utilities Commission of District of Columbia* (D.C.D.C. 1953, 114 F. Supp. 321).

Final and conclusive orders

Where each year during which sliding scale arrangement under consent decree had been in effect, electric rates were fixed by an order of Public Utilities Commission, the annual orders became final and conclusive when no person affected thereby availed himself of right of appeal under this section, and therefore the rates so fixed became the legal rates for the periods during which they were to endure, and neither the United States, as a consumer, nor any other party affected thereby could brand them as illegal. *United States* v. *Public Utilities Commission of District of Columbia* (1947, 158 F. 2d 533, 81 U. S. App. D. C. 237, certiorari denied 67 S. Ct. 1305, 331 U. S. 816, 91 L. Ed. 1835).

Findings of commission

Findings of administrative agency such as Public Utility Commission of District of Columbia, where there is evidence to support them, may not be set aside by court. *Washington Gas Light Co.* v. *Byrnes* (1943, 137 F. 2d 547, 79 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

A mere general opinion of Public Utilities Commission of District of Columbia in relation to gas rates, unsupported by findings of fact based on substantial evidence is ineffective. *Washington Gas Light Co.* v. *Public Utilities Commission of District of Columbia* (D.C.D.C. 1944, 55 F. Supp. 627).

Jurisdiction of courts

Congress may vest in the courts of the District power to review the discretion of a Public Utilities Commission fixing rates for a public service corporation, and enter the order which they deem the commission should have made. *Keller* v. *Potomac Elec. Power Co.* (1923, 43 S. Ct. 445, 261 U. S. 428, 67 L. Ed. 731).

Where order of the Public Utilities Commission dismissing investigation with respect to radio broadcasts on vehicles of the transit system for the District of Columbia was erroneous as matter of law and the District Court dismissed the petitions of appellants on the ground that no legal right of theirs had been invaded, the Court of Appeals was authorized to vacate the judgment of the District Court with instructions to vacate the Commission's order and remand the case to the Commission for further proceedings, and appellants whose constitutional rights were allegedly invaded, were not required to sue out an injunction under the court's general equity powers, in order to obtain relief. *Pollak et al.* v. *Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

Nature and scope of appeal

The right of appeal from order of public service commission is statutory in character, and extent of the right in each case depends upon meaning of language used in the statute, and not upon ordinary requirements of injunction suits. *United States* v. *Public Utilities Commission of District of Columbia* (1945, 151 F. 2d 609, 80 U. S. App. D. C. 227).

If total effect of rates fixed by the Public Utilities Commission of the District of Columbia for electric power cannot be said to be unjust and unreasonable, judicial inquiry is at an end. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

On appeals from orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power, federal District Court could consider whether commission committed any error of law vitiating its orders, whether conclusions were adequately supported by findings of fact, and whether findings of fact were sustained by substantial evidence. *Id.*

On appeals from orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power, federal District Court could consider whether commission committed any error of law vitiating its orders, whether conclusions were adequately supported by findings of fact, and whether findings of fact were sustained by substantial evidence. *Id.*

Persons affected

District Court should have found that one who filed petition to intervene in proceedings before Public Utilities Commission of District of Columbia with respect to bus and streetcar fares was transit rider and entitled to appeal to District Court from Commission's order, where he made sworn statement in proceedings before Commission that he was regular commuter on carrier's vehicles. *L. N. Bebchick & L. S. Goodman* v. *Public Utilities Commission etc.* (1961, 287 F. 2d 337, 109 U.S. App. D.C. 298).

Transit riders on buses and streetcars of carrier were entitled to appeal to District Court from order of Public Utilities Commission of District of Columbia raising cash fare for single trip from 20 cents to 25 cents, though order did not increase token fare of five for $1 or 20 cents each. *Id.*

District Court should have found that person, who filed petition in proceedings in Public Utilities Commission

of District of Columbia concerning bus and streetcar fares for reconsideration of order fixing fares, and who alleged therein that he was a transit rider, and who filed affidavit stating that he was occasional and casual customer and rider of buses and streetcars of carrier, was transit rider and entitled to appeal to District Court from Commission's order. *Id.*

Where order of the Public Utilities Commission dismissed its investigation of protests by passengers against use of radio loudspeakers on vehicles of transit company of the District of Columbia and the final decision of the Commission was that the transit company could use loudspeakers in its vehicles, the order was appealable. *Pollak et al.* v. *Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

The term "person affected", as used in this section includes a consumer of a public utility company. *United States* v. *Public Utilities Commission of District of Columbia* (1945, 151 F. 2d 609, 80 U. S. App. D. C. 227).

The United States, as a customer of public utility company, had standing as a "person affected" to prosecute its petition of appeal in the District Court from an order of Public Utilities Commission of District of Columbia determining rates which the company could charge for sale of electric energy in District of Columbia. *Id.*

Petitions of appeal

Where appellants' petition of appeal from an order of the Public Utilities Commission permitting use of radio loudspeakers on vehicles of transit system for the District of Columbia, stated that they were obliged to use the vehicles of the system and were thereby subjected against their will to the broadcasts in issue and the appellees moved to dismiss the petitions, allegations of the petitions were admitted. *Pollak et al.* v. *Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

Presumption of validity of orders

Orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power carried presumption of validity, and those who would upset the rate orders had heavy burden of making a convincing showing that orders were invalid because unjust and unreasonable. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

Record

Order of District Court vacating Public Utility Commission's order granting utility a rate increase could not be reversed on theory that district judge did not have before him record of case before commission where material parts of record were brought to attention of district judge at time of hearing and before his decision was rendered. *Washington Gas Light Co.* v. *Byrnes* (1943, 137 F. 2d 547, 78 U. S. App. D. C. 107, affirmed 64 S. Ct. 731, 321 U. S. 489, 88 L. Ed. 883).

Several orders

An order of Public Utilities Commission granting an increase in cash fare to be charged by transit company was not moot due to suppression of that order by subsequent order which continued in effect increased cash fare since validity of first order during time it was in effect remained in controversy, in that disposition of any excess funds which might have accumulated prior to subsequent order, by reason of invalidity of the increase, remained for decision. *L. N. Bebchick et al.* v. *Public Utilities Commission et al.* (1963, 318 F. 2d 187, 115 U.S. App. D.C. 216).

Validity

A section of the statute providing for review is not rendered wholly void by the inclusion in it of an invalid provision for ultimate appeal to the Supreme Court. *Keller* v. *Potomac Elec. Power Co.* (1923, 43 S. Ct. 445, 261 U. S. 428, 67 L. Ed. 731).

§ 43–706. Appeal limited to questions of law.

In the determination of any appeal from an order or decision of the Commission the review by the court shall be limited to questions of law, including constitutional questions; and the findings of fact by the Commission shall be conclusive unless it shall appear that such findings of the Commission are unreasonable, arbitrary, or capricious. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 66; Aug. 27, 1935, 49 Stat. 883, ch. 742, § 2.)

AMENDMENT

1935—Act Aug. 27, 1935, amended section generally. Prior to such amendment, section provided: "That no injunction shall issue suspending or staying any order of the commission, except upon application to the Supreme Court of the District of Columbia or a judge thereof, and only upon notice to the commission and after hearing had."

NOTES TO DECISIONS

In general

The District of Columbia Public Utilities Commission should keep in mind its obligation to facilitate judicial review of its orders and should assemble record and make findings which cover all the relevant issues and should indicate the formula chosen and should make clear the evidentiary support for its findings under whatever formula adopted. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U. S. App. D. C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

Application for reconsideration

Where first order of the Public Utilities Commission of the District of Columbia in proceedings for increase of rates for electric power was in effect an interlocutory order formulating merely principles on which new rate schedules should be prescribed, and second order prescribing actual rates was the final order, petition for reconsideration filed within 30 days of second order, though not filed within 30 days of first order, sufficiently complied with statutory requirement that in order to be qualified to appeal from an order of the commission party claiming to be aggrieved must make an application to commission for reconsideration within 30 days after publication of its final order or decision. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

Discretion of commission

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safe-guarded. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U. S. App. D. C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

Evidence supporting findings

When supported by substantial evidence, Public Utilities Commission's choice between two conflicting views will not be disturbed, even though court might justifiably have reached a different conclusion had the matter been before it de novo. *Washington, Marlboro & Annapolis Motor Lines, Inc.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1953, 114 F. Supp. 328, affirmed 206 F. 2d 490).

Evidence sustained orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

On appeals from orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power, federal District Court could consider whether commission committed any error of law vitiating its orders, whether conclusions were adequately supported by findings of fact, and whether findings of fact were sustained by substantial evidence. *Id.*

Presumption of validity of orders

Orders of the Public Utilities Commission of the District of Columbia increasing rates for electric power carried presumption of validity, and those who would upset the rate orders had heavy burden of making a convincing

showing that orders were invalid because unjust and unreasonable. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

Rates, computation of

Ordinarily, in determining electric power rate, question whether smaller unit of electric power should be used as a basis for rate making is a matter of discretion for the regulatory agency. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

Normally, the unit for rate-making purposes for electricity is the entire interconnected operating property of the utility, without regard to geographical subdivisions, though conditions may be such as to require or permit segregation of a smaller unit. *Id.*

Reasonableness and justness of rates fixed

If Public Utilities Commission's order providing for increase in rate to be charged by transit company produces no arbitrary results, court's inquiry is at an end. *Allied Civic Group, Inc., et al.* v. *Public Utilities Commission* (D.C.D.C. 1955, 125 F. Supp. 453).

If total effect of rates fixed by the Public Utilities Commission of the District of Columbia for electric power cannot be said to be unjust and unreasonable, judicial inquiry is at an end. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

Record

On appeal from order of Public Utilities Commission of District of Columbia, case is not before court de novo, and court will not consider and review entire record. *Washington, Marlboro & Annapolis Motor Lines, Inc.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1953, 114 F. Supp. 328, affirmed 206 F. 2d 490).

Review, limitations of

Function of the Court of Appeals in reviewing the Public Utilities Commission's orders and decisions is limited to questions of law including constitutional questions and the Commission's findings of fact are conclusive unless it appears that the findings are unreasonable, arbitrary, or capricious. *D.C. Transit System, Inc.* v. *Public Utilities Commission etc.* (1961, 292 F. 2d 734, 110 U.S. App. D.C. 241).

§ 43–707. Orders to remain in force pending appeal—Suspension of order.

All orders and decisions of the Commission shall remain in full effect, except as provided in section 43–704 hereof, unless and until they are suspended, superseded, or rescinded by the Commission or are vacated by lawful order of the United States District Court for the District of Columbia: *Provided,* That if in any petition made to the said court appealing from an order or decision of the Commission it be alleged that substantial and irreparable property loss would be occasioned to the petitioner by the operation of the said order pending the determination of the said appeal, the court shall set a time and place for hearing upon the said allegation after not less than three days' notice to the Commission (during which period the execution of the order or decision shall be stayed), and the said court may then, upon a clear showing of the irreparable and substantial property loss as alleged, suspend the effective date of the said order. No such suspension shall be for a greater period than sixty days without further order after notice or hearing by the court. In the event of the issuance of an order suspending the operation of any order of the Commission, the court may include therein such provision as it deems advisable for the preservation of records or accounts and the impounding or otherwise securing of moneys necessary to give effect to the order of the Commission in the event the said order is sustained. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 67; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1935—Act of Aug. 27, 1935, substituted the above section for paragraph 67 of § 8 of the 1913 act, which provided the procedure formerly followed upon introduction of new evidence.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

NOTES TO DECISIONS

Error of law

High profits of electric company and alleged fact that Public Utilities Commission had not been as vigilant as it might have been in driving down the company's rates did not establish an error of law requiring judicial remedy and did not justify retrospectively holding invalid rate schedules authorized by the Commission over a course of many years. *U. S.* v. *Public Utilities Commission of District of Columbia* (1947, 158 F. 2d 533, 81 U. S. App. D. C. 237, certiorari denied 67 S. Ct. 1305, 331 U. S. 816, 91 L. Ed. 1835).

The earnings, in percentages, are meaningful only when they are related to electric company's total capital structure which presents a task for the Public Utilities Commission, and federal appellate court should not impose its judgment to effect that earnings were unlawful unless it is clearly shown that the rates which gave rise to the earnings were invalid because they woefully neglected the interests of consumers. *Id.*

§ 43–708. Certification of question to United States Court of Appeals.

The United States District Court for the District of Columbia, or any judge thereof before whom an appeal from an order of the Commission is pending, may certify to the United States Court of Appeals for the District of Columbia any questions or propositions of law concerning which instructions are desired for the proper disposition of the appeal; and thereupon the Court of Appeals may either give binding instructions on the questions and propositions certified or may require that the entire record in the cause be sent up for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there by writ of error or appeal. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 68; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1935—Act Aug. 27, 1935, amended section generally. Prior to such amendment, section provided: "That if the commission shall rescind its order complained of the proceeding or suit shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order, and costs shall be taxed as may be deemed proper under the circumstances."

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "judge" for "justice."

§ 43–709. Authority of Commission to rescind its order after appeal is filed.

The Commission may at any time, rescind, alter, modify, or amend its order. If, after appeal is filed, the Commission shall rescind the order or decision appealed from, the appeal shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order or decision shall take the place of the original order and the court shall proceed thereon as though the late order had been made by the Commission in the first instance. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 69; Aug. 27, 1935, 49 Stat. 884, ch. 742, §2.)

AMENDMENT

1935—Act Aug. 27, 1935, substituted the above section for paragraph 69 of § 8 of the 1913 act, which fixed the burden of proof on the party adverse to the Commission or seeking to set aside determination, requirement, or order of said Commission.

CROSS REFERENCE

Amendment or revocation of orders, see § 43–702.

§ 43–710. Method of review exclusive.

The method of review of the orders and decisions of the Commission provided by sections 43–704 to 43–709, herein, shall be exclusive. (Mar. 4, 1913, ch. 150, § 8, par. 69a, as added Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2.)

§ 43–711. Separability of provisions.

If any provisions of sections 43–412, 43–704 to 43–710 or the application to any person or circumstances is held invalid, the invalidity of the remainder of said sections and of the application of such provision to other persons and circumstances shall not be affected thereby. (Aug. 27, 1935, 49 Stat. 885, ch. 742, § 4.)

SAVINGS PROVISION

Section 5 of act Aug. 27, 1935, provided as follows: "No proceeding or litigation, except a proceeding involving solely the valuation of the property of any public utility, pending in any court in the District of Columbia on August 27, 1935, shall be affected by any of the provisions hereof."

§ 43–712. Production of incriminating evidence compellable, immunity from prosecution.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of chapters 1–10 of this title, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence: *Provided,* That no person so testifying shall be exempted from prosecution or punishment for perjury: *Provided further,* That the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpœna, gives testimony under oath or produces evidence, documentary or otherwise, under oath. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 70.)

CROSS REFERENCE

Criminal penalties for failure to testify or to produce documentary evidence, see § 43–905.

§ 43–713. Commission to furnish certified copies of orders.

Upon application of any person the commission shall furnish certified copies, under the seal of the commission, of any order made by it, which shall be prima facie evidence of the facts stated therein. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 71.)

Chapter 8.—ISSUANCE OF SECURITIES

Sec.
43–801. Creation of liens on property of utilities—Supervision by Commission.
43–802 Certificate of Commission showing authority to issue stock or pay dividends to be obtained.
43–803. Stocks not to be issued until certificate is recorded.
43–804. Repealed.
43–805. Issue of stocks for purpose of reorganization or consolidation—Approval of consolidation by Commission.
43–806. Application of proceeds of stock.
43–807. Stock to be void unless law is complied with.
43–808. Penalty for improper issuance or application of stock or proceeds.

§ 43–801. Creation of liens on property of utilities—Supervision by Commission.

The power to create liens on corporate property by public utilities in the District of Columbia is hereby declared to be a special privilege, the right of supervision, regulation, restriction, and control of which is hereby vested in the Public Service Commission of the District of Columbia, and such power shall be exercised according to the provisions of chapters 1–10 of this title. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 72; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

CHANGE OF NAME

Section 21 of act, Aug. 30, 1964, Pub. L. 88–503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia.' See section 2–2418.

CROSS REFERENCES

Constitutionality of act, see § 43–1003.
Construction of act, see § 43–1003.
Saving clauses, see §§ 43–1005, 43–1006.

§ 43–802. Certificate of Commission showing authority to issue stock or pay dividends to be obtained.

No public utility shall hereafter issue any stocks, stock certificates, bonds, mortgages, or any other evidences of indebtedness payable in more than one year from date, or pay any stock, bond or scrip dividend, until it shall have first obtained the certificate of the commission showing authority for such issue from the commission. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 73; Aug. 4, 1955, 69 Stat. 485, ch. 545, § 2.)

AMENDMENT

1955—Act Aug. 4, 1955, amended section by inserting the words "or pay any stock, bond or scrip dividend," after word "date."

CROSS REFERENCE

Criminal penalties, see § 43–901.

§ 43–803. Stocks not to be issued until certificate is recorded.

No public utility shall issue any stocks, certificates of stock, bonds, or other evidences of indebtedness for money, property, or services, either directly or indirectly, nor shall it receive any money, property, or services in payment of the same, either directly or indirectly, until there shall have been recorded upon the books of such public utility the certificate of the commission in chapters 1–10 of this title provided for. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 74.)

CROSS REFERENCE

Criminal penalties, see § 43–901.

§ 43–804. Repealed. Aug. 4, 1955, 69 Stat. 485, ch. 545, § 1.

Section, act Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 75, prohibited public utilities from declaring any stock, bond, or scrip dividend, etc. See § 43–802.

§ 43–805. Issue of stocks for purpose of reorganization or consolidation—Approval of consolidation by Commission.

No public utility shall issue any stocks, certificates of stock, bonds, or other evidences of indebtedness secured on its property in the District of Columbia for the purpose of any reorganization or consolidation in excess of the total amount of the stocks, certificates of stock, bonds, or other evidences of indebtedness than outstanding against the public utilities so reorganizing or consolidating, and no such public utility shall purchase the property of any other public utility for the purpose of effecting a consolidation until the commission shall have determined and set forth in writing that said consolidation will be in the public interest, nor until the commission shall have approved in writing the terms upon which said consolidation shall be made. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 76.)

CROSS REFERENCES

Merger of street railways, see § 43–503.
Other similar provisions, see §§ 43–501, 43–502.

§ 43–806. Application of proceeds of stock.

No public utility shall apply the proceeds of any such stock, certificates of stock, bonds, or other evidences of indebtedness to any other purpose or issue the same on any less favorable terms than that specified in the certificate issued by the commission. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 77.)

§ 43–807. Stock to be void unless law is complied with.

All stocks, certificates of stock, bonds, and other evidences of indebtedness issued contrary to the provisions of chapters 1–10 of this title shall be void. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 78.)

§ 43–808. Penalty for improper issuance or application of stock or proceeds.

Any public utility, or any agent, director, or officer thereof, who shall, directly or indirectly, issue or cause to be issued any stocks, certificates of stock, bonds, or other evidences of indebtedness contrary to the provisions of chapters 1–10 of this title, or who shall apply the proceeds from the sale thereof to any purposes other than that specified in the certificate of the commission, shall forfeit and pay into the Treasury of the United States, to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia, not less than $1,000 nor more than $10,000 for each offense. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 79; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

AMENDMENT

1921—Act Feb. 22, 1921, amended section by adding the words beginning with "to the credit" and ending with "revenues of the District of Columbia."

CROSS REFERENCES

Annual payment by United States, appropriations, see §§ 47–2501a and 47–2501b.
Disposition of fines, forfeitures, and penalties, see § 43–912.
Other criminal penalties, see § 43–901.
Penalties and forfeitures do not bar prosecutions under other laws, see § 43–913.

Chapter 9.—PENAL PROVISIONS

Sec.
43–901. Penalty for false statements in securing approval of issuance of stock.
43–902. Penalty for demanding or receiving greater or less than established rates.
43–903. Less than established rates not to be charged in consideration of consumer furnishing equipment—Exceptions.
43–904. Rebates prohibited—Penalty.
43–905. Penalties for failing or refusing to furnish information, for furnishing false information, for failing to keep proper accounts.
43–906. Penalty for failure or refusal to perform duty enjoined or to obey order of Commission.
43–907. Prosecution and penalty for violation of rules.
43–908. Construction of sections 43–906 and 43–907.
43–909. Penalty for destruction of apparatus or appliance of Commission.
43–910. Each day's default to constitute separate and distinct offense.
43–911. Commission may regulate unreasonable and discriminatory rates and fix new rates.
43–912. Fines, penalties, and forfeitures to be paid into Treasury.
43–913. Saving clause—Rights, penalties, and forfeitures under laws and regulations continued—Penalties and forfeitures cumulative.

§ 43–901. Penalty for false statements in securing approval of issuance of stock.

Each and every director, president, secretary, or other official of any such public utility who shall make any false statement to secure the issue of any stock, certificate of stock, bond, mortgage, or other evidence of indebtedness, or who shall, by false statement knowingly made, procure of the commission the making of the certificate herein provided, or issue, with knowledge of such fraud, negotiate, or cause to be negotiated, any such stock, certificate of stock, bond, mortgage, or other evidence of indebtedness in violation of chapters 1–10 of this title, shall be guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than $1,000 or by imprisonment for a term of not less than one year, or by both such fine and imprison-

ment, in the discretion of the court. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 80.)

§ 43–902. Penalty for demanding or receiving greater or less than established rates.

If any public utility or any agent or officer thereof shall, directly or indirectly, by any device whatsoever, or otherwise, charge, demand, collect, or receive from any person, firm, or corporation a greater or less compensation for any service rendered or to be rendered by it in or affecting or relating to the conduct of a street railroad or street railroad corporation, common carrier, gas plant, gas corporation, electric plant, electric corporation, water power company, telephone line, telephone corporation, telegraph line, or telegraph corporation, or pipe line company, or to the production, transmission, delivery, or furnishing of heat, light, water, or power, or the conveyance of telephone or telegraph messages, or for any service in connection therewith than that prescribed in the public schedules or tariffs then in force or established as provided herein, or than it charges, demands, collects, or receives from any other person, firm, or corporation other than one conducting a like business for a like and contemporaneous service, such public utility shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be a misdemeanor and unlawful, and upon conviction thereof shall forfeit and pay to the District of Columbia not less than $100 nor more than $1,000 for each offense; and such agent or officer so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $50 nor more than $100 for each offense. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 81.)

CROSS REFERENCE

Illegal rates by electric power companies, see § 43–1107.

NOTES TO DECISIONS

Cash deposit

Utility may require cash deposit from customers unable to establish financial responsibility. *Riegel* v. *Public Utilities Comm.* (1931, 48 F. 2d 1023, 60 App. D. C. 11).

§ 43–903. Less than established rates not to be charged in consideration of consumer furnishing equipment—Exceptions.

It shall be unlawful for any public utility to demand, charge, collect, or receive from any person, firm, or corporation less compensation for any service rendered or to be rendered by said public utility in consideration of the furnishing by said person, firm, or corporation of any part of the facilities incident thereto: *Provided*, That nothing herein shall be construed as prohibiting any public utility from renting any facilities incident to the production, transmission, delivery or furnishing of heat, light, water, or power, or the supply of any liquid, steam or air, through pipes or tubing, or the conveyance of telegraph or telephone messages, and paying a reasonable rental therefor; or as requiring any public utility to furnish any part of such appliances which are situated in and upon the premises of any consumer or user, except telephone station equipment upon the subscriber's premises, and, unless otherwise ordered by the commission, meters, and appliances for measurements of any product or service. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 82.)

§ 43–904. Rebates prohibited—Penalty.

It shall be unlawful for any person, firm, or corporation to solicit, accept, or receive any rebate, concession, or discrimination in respect to any service in or affecting or relating to any public utility or the production, transmission, delivery, or furnishing of heat, light, water, or power, or any liquid, steam, or air, or the conveying of telegraph or telephone messages within the District of Columbia, or for any service in connection therewith whereby any such service shall, by any device whatsoever or otherwise, be rendered free or at a less rate than that named in the schedules and tariffs in force as provided in chapters 1–10 of this title, or whereby any service or advantage is received other than is in chapters 1–10 of this title specified. Any person, firm, or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than $200 nor more than $1,000 for each offense. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 83.)

§ 43–905. Penalties for failing or refusing to furnish information, for furnishing false information, for failing to keep proper accounts.

Any officer, agent, or employee of any public utility who shall fail or refuse to fill out and return any blanks, as required by chapters 1–10 of this title, or shall fail or refuse to answer any question therein propounded, or shall knowingly or wilfully give a false answer to any such question, or shall evade the answer to any such question where the fact inquired of is within his knowledge, or who shall, upon proper demand, fail or refuse to exhibit to the commission or any commissioner or any person authorized to examine the same, any book, paper, account, record, or memoranda of such public utility which is in his possession or under his control, or who shall fail to properly use and keep his system of accounting, or any part thereof, as prescribed by the commission under chapters 1–10 of this title, or who shall refuse to do any act or thing in connection with such system of accounting when so directed by the commission or its authorized representative shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $200 nor more than $1,000 for each offense, and a penalty of not less than $500 nor more than $2,000 shall, on conviction, be imposed on the public utility for each such offense when such officer, agent or employee acted in obedience to the direction, construction,[1] or request of such public utility or any general officer thereof. (Mar. 4, 1913, 37 Stat. 992 ch. 150, § 8, par. 84.)

§ 43–906. Penalty for failure or refusal to perform duty enjoined or to obey order of Commission.

If any public utility shall violate any provision of chapters 1–10 of this title, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the commission, or any judgment or decree made by any court upon its application, for every such violation

[1] So in original. Probably should read "instruction".

failure, or refusal such public utility shall forfeit and pay to the District of Columbia the sum of $200 for each such offense. In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any public utility acting within the scope of his employment and instructions shall in every case be deemed to be the act, omission, or failure of such public utility. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 85.)

CROSS REFERENCES

Each day's default separate offense, see § 43–910.

Investigation of neglect or violations of laws rules, or regulations, see § 43–1002.

§ 43–907. Prosecution and penalty for violation of rules.

Prosecution for violation of any rule, order, or regulation made, adopted, or approved by the Public Service Commission under authority of chapters 1–10 of this title, or section 40–603, or sections 47–2301 to 47–2328, 47–2331 to 47–2450, or by the Joint Board under authority of section 40–603 or sections 47–2301 to 47–2328, 47–2331 to 47–2350, shall be on information in the District of Columbia Court of General Sessions, in the name of the District of Columbia, by the corporation counsel or any of his assistants. Any person, corporation, or public utility violating any such rule, order, or regulation shall, upon conviction, be fined not more than $200: *Provided,* That the provisions of sections 43–907, 43–908 shall not be construed to apply to rules, orders, or regulations adopted or promulgated by the Commissioners of the District of Columbia which are not specifically required to be referred to the Joint Board or subject to the approval of such board: *Provided further,* That with respect to orders, rules, or regulations made or adopted by the Public Service Commission under authority of chapters 1–10 of this title this section shall be construed to apply only to such orders, rules, or regulations as are subject to the penalties specifically provided in section 43–906. (Apr. 5, 1939, 53 Stat. 569, ch. 40, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

Section 21 of act, Aug. 30, 1964, Pub. L. 88–503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See section 2–2418.

CROSS REFERENCES

Rules and regulations generally, see § 43–202.

Violations of provisions concerning street cars, see § 44–203.

§ 43–908. Construction of sections 43–906 and 43–907.

The provisions of sections 43–906 and 43–907, so far as they relate to the orders, rules, and regulations of the Public Service Commission, shall be construed as prescribing alternative methods of enforcement of the orders, rules, or regulations of the commission, and any order, rule, or regulation adopted by the Public Service Commission which is required to be referred to or is subject to the approval of the joint board may be enforced either as provided by sections 43–906 or 43–907. (Apr. 5, 1939, 53 Stat. 569, ch. 40, § 2; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

CHANGE OF NAME

Section 21 of act, Aug. 30, 1964, Pub. L. 88–503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See section 2–2418.

§ 43–909. Penalty for destruction of apparatus or appliance of Commission.

Any person who shall destroy, injure, or interfere with any apparatus or appliance owned or operated by or in charge of the commission or its agent shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding $100 or imprisonment for a period not exceeding thirty days, or both. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 86.)

§ 43–910. Each day's default to constitute separate and distinct offense.

Every day during which any public utility, or any officer, agent, or employee thereof, shall fail knowingly or willfully to observe and comply with any order or direction of the commission, or to perform any duty enjoined by this section, shall constitute a separate and distinct violation of such order, or direction, or of chapters 1–10 of this title, as the case may be. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 87.)

§ 43–911. Commission may regulate unreasonable and discriminatory rates and fix new rates.

Whenever, after hearing and investigation as provided in chapters 1–10 of this title, the commission shall find that any rate, toll, charge, regulation, or practice of any public utility within the District of Columbia is unreasonable or discriminatory, it shall have the power to regulate, fix, and determine the same as provided in chapters 1–10 of this title. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 88.)

CROSS REFERENCES

General provision for alteration, revocation, or amendment of orders, see § 43–702.

Investigation and determination of rates, see §§ 43–408 to 43–417.

NOTES TO DECISIONS

In general

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U. S. App. D. C. 115, certiorari denied 71 S. Ct. 571, 340 U. S. 952, 95 L. Ed. 686).

§ 43–912. Fines, penalties, and forfeitures to be paid into Treasury.

All moneys received from fines, forfeitures, and penalties shall be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of

the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 98; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

CODIFICATION

Section consolidates par. 98 of section 8 of act Mar. 4, 1913, and section 7 of act Feb. 22, 1921.

CROSS REFERENCE

Annual payment by United States, appropriations, see §§ 47–2501a and 47–2501b.

§ 43–913. Saving clause—Rights, penalties, and forfeitures under laws and regulations continued—Penalties and forfeitures cumulative.

Chapters 1–10 of this title shall not have the effect to release or waive any right of action by the United States, or by the District of Columbia, or by any person, for any right, penalty, or forfeiture under any law of the United States or any regulation in force in the District of Columbia; and all penalties and forfeitures accruing under said chapters shall be cumulative, and a suit for any recovery of one shall not be a bar to the recovery of any other penalty. (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 93.)

Chapter 10.—GENERAL PROVISIONS

Sec.

43–1001. Utilities to report to Commission accidents upon their premises—Commission may investigate.
43–1002. Commission to inquire into neglect or violation of law and have power to enforce all laws affecting utilities.
43–1003. Chapters to be liberally construed—Separability of provisions.
43–1004. Number of directors of public utilities.
43–1005. Existing laws to remain in force.
43–1006. Action pending March 4, 1913, unaffected by chapters 1–10 of this title.
43–1007. Right to alter, amend, or repeal reserved.

§ 43–1001. Utilities to report to Commission accidents upon their premises—Commission may investigate.

Every public utility shall, whenever an accident attended with loss of human life or personal injury without loss of human life occurs within the District of Columbia, upon its premises, or directly or indirectly arising from or connected with its maintenance or operation, give immediate notice thereof to the commission. In the event of any such accident, the commission, if it deem the public interest requires it, shall cause an investigation to be made forthwith. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 89.)

§ 43–1002. Commission to inquire into neglect or violation of law and have power to enforce all laws affecting utilities.

The commission shall inquire into any neglect or violation of the laws or regulations in force in the District of Columbia by any public utility doing business therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it shall be its duty, to enforce the provisions of chapters 1–10 of this title as well as all other laws relating to public utilities. (Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 90.)

CROSS REFERENCE

General provisions for enforcement of laws, rules and regulations, see §§ 43–906 to 43–908.

NOTES TO DECISIONS

Jurisdiction

Where transit company for the District of Columbia installed radio loudspeakers in its vehicles for radio broadcasts of music and commercial announcements, and on protest of passengers the Public Utilities Commission ordered an investigation and dismissed the investigation by final order which was appealed to the District Court which dismissed the petitions of the passengers on the grounds that no legal rights had been invaded, jurisdiction of the Commission and the District Court was present. *Pollak et al.* v. *Public Utilities Commission of the District of Columbia et al.* (1951, 191 F. 2d 450, 89 U. S. App. D. C. 94, reversed on other grounds 72 S. Ct. 813, 343 U. S. 451, 96 L. Ed. 1068).

§ 43–1003. Chapters to be liberally construed—Separability of provisions.

The provisions of chapters 1–10 of this title shall be interpreted and construed liberally in order to accomplish the purposes thereof, and where any specific power or authority is given the commission by the provisions of chapters 1–10 of this title the enumeration thereof shall not be held to exclude or impair any power or authority otherwise in chapters 1–10 of this title conferred on said commission. The commission hereby created shall have, in addition to the powers in chapters 1–10 of this title specified, mentioned, and indicated all additional, implied, and incidental power which may be proper and necessary to effect and carry out, perform, and execute all the said powers herein specified, mentioned, and indicated. A substantial compliance with the requirements of chapters 1–10 of this title shall be sufficient to give effect to all the rules, orders, acts, and regulations of the commission, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto. That each section of chapters 1–10 of this title, and every part of each section, are hereby declared to be independent sections and the holding of any section or sections or part or parts thereof to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other section or part thereof. (Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 92.)

§ 43–1004. Number of directors of public utilities.

The Board of Directors of every public utility shall consist of not more than fifteen nor less than seven members, within which limitation the membership may be in any case increased or diminished, as the stockholders may from time to time determine. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 100.)

§ 43–1005. Existing laws to remain in force.

Except as modified or changed by chapters 1–10 of this title and until modified or changed under its provisions, all charters, statutes, laws, ordinances, and regulations in force on March 4, 1913, shall remain and continue to be in full force and effect until altered, amended, or repealed according to law: *Provided,* That all charters, statutes, acts, and parts of acts, laws, ordinances, and regulations enacted prior to March 4, 1913, inconsistent and repugnant to the provisions of chapters 1–10 of this title, and only so far as inconsistent and repugnant thereto, are hereby repealed. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 101.)

CROSS REFERENCES

Appeal and review, separability clause, see § 43–711.

Other provisions for saving clause for laws, orders, rules and regulations and pending proceedings, see §§ 43–203, 43–1006.

§ 43–1006. Action pending March 4, 1913, unaffected by chapters 1–10 of this title.

Chapters 1–10 of this title shall not affect actions or proceedings, civil or criminal, or quasi criminal, pending on March 4, 1913, but the same may be prosecuted or defended as provided by preexisting law or regulation. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 102.)

COMPILER'S NOTE

This section is probably temporary and obsolete.

CROSS REFERENCE

Saving clause, see § 43–1005.

§ 43–1007. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal chapters 1–10 of this title. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 103.)

Chapter 11.—ELECTRIC LIGHT AND POWER COMPANIES—SPECIAL ACTS

Sec.

43–1101. Extension of overhead wires in Georgetown—Extension of underground conduits in Mount Pleasant.
43–1102. Conduits and overhead wires for electric lighting prohibited in streets—House connections authorized.
43–1103. Certain existing conduits and overhead wires legalized.
43–1104. Electric-lighting wires west of Rock Creek.
43–1105. Electric-lighting wires east of Rock Creek.
43–1106. Permits for repair, extension, and enlargement of conduits.
43–1107. Extension of conduits—Ducts for use of fire and police wires—Maximum price of current—Additional charge for nonpayment of bills.
43–1108. Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company.
43–1109. Repealed.

§ 43–1101. Extension of overhead wires in Georgetown—Extension of underground conduits in Mount Pleasant.

The said commissioners may authorize any electric light company existing June 11, 1896, to construct and use under such regulations as the commissioners may fix conduits for the reception of overhead wires existing on said date within the territory formerly known as Georgetown, and to extend the same by an aggregate of not more than one and one-fourth miles of conduit in the same territory. And the United States Electric Lighting Company may extend its underground conduits and wires east of Rock Creek and within the fire limits to Mount Pleasant, and Washington and Columbia Heights under such regulations as the Commissioners of the District of Columbia may prescribe. (June 11, 1896, 29 Stat. 401, ch. 419 § 1.)

CROSS REFERENCES

Inspection and regulation of production, use and control of electrical power, see § 1–719 et seq.

Jurisdiction and control over public ways, see § 7–102.

Permits to lay underground conduits in or on highways, streets, and bridges, see §§ 7–1230, 7–1232.

Private conduits, see § 43–1301 et seq.

Protection of life, health, and property, rules and regulations generally, see § 1–226.

§ 43–1102. Conduits and overhead wires for electric lighting prohibited in streets—House connections authorized.

Until Congress shall provide for a conduit system it shall be unlawful to lay conduits or erect overhead wires for electric lighting purposes in any road, street, avenue, highway, park, or reservation, except as specifically authorized by law: *Provided, however,* That the Commissioners of the District of Columbia are hereby authorized to issue permits for house connections with conduits and overhead wires existing on June 4, 1897, adjacent to the premises with which such connection is to be made; and also permits for public lighting connections with conduits existing on June 4, 1897, in the portion of the street proposed to be lighted. And nothing herein contained shall be construed to affect in any way any litigation pending on June 4, 1897, involving the validity or invalidity or legality of the construction of any conduits made since June 18, 1896, nor to prevent the United States Electric Lighting Company from extending conduits into Columbia Heights, Washington Heights, and Mount Pleasant within the fire limits as specifically provided in sections 43–1101 and 43–1401. (Mar. 3, 1897, 29 Stat. 673, ch. 387; June 4, 1897, 30 Stat. 41, ch. 2.)

CODIFICATION

Section consolidates parts of acts Mar. 3, 1897, and June 4, 1897.

CROSS REFERENCE

Similar provisions, see § 43–1401.

§ 43–1103. Certain existing conduits and overhead wires legalized.

All conduits existing on July 7, 1898, within the fire limits, and all overhead electric light wires existing on July 7, 1898, without the fire limits in the District of Columbia are hereby legalized until otherwise provided by law, and house connections may be made with such overhead electric light wires outside such fire limits. (July 7, 1898, 30 Stat. 664, ch. 571 § 1.)

§ 43–1104. Electric-lighting wires west of Rock Creek.

The Commissioners of the District of Columbia are hereby authorized to issue permits to electric light companies existing on July 8, 1898, in the District of Columbia for the extension of overhead electric wires existing on July 8, 1898, outside the fire limits and west of Rock Creek to be used for lighting purposes only. (July 8, 1898, 30 Stat. 753, Joint Res. No. 59.)

§ 43–1105. Electric-lighting wires east of Rock Creek.

The Commissioners of the District of Columbia are hereby authorized, under conditions and regulations to be prescribed by them, to permit the erection of poles and the stringing of overhead wires thereon outside of the fire limits and east of Rock Creek for electric-lighting purposes only. (July 1, 1902, 32 Stat. 602, ch. 1352 § 1.)

§ 43–1106. Permits for repair, extension, and enlargement of conduits.

The Commissioners of the District of Columbia are hereby authorized to grant permits for the repair, enlargement, and extension, under proper regula-

tions, of electric-lighting conduits existing on June 6, 1900, and in every conduit constructed or to be constructed under the provisions of this section, three ducts shall be reserved for the use of the United States and the District of Columbia. (June 6, 1900, 31 Stat. 563, ch. 789, § 1.)

§ 43–1107. Extension of conduits—Ducts for use of fire and police wires—Maximum price of current—Additional charge for nonpayment of bills.

The Commissioners of the District of Columbia are authorized to grant permits for the repair, enlargement, and extension, under proper regulations, of electric-lighting conduits existing on March 3, 1899, and in every conduit constructed or to be constructed under the provisions of this section, three ducts shall be reserved for the use of the United States and the District of Columbia. As a condition for the right to use conduits built prior to March 3, 1899, or built or to be built under the provisions of this section, the electric lighting companies shall be required at all times to furnish to the public and to private consumers in all parts of the District of Columbia standard arc lights of not less than one thousand actual candlepower, at a rate not exceeding seventy-two dollars per annum for each arc light. The maximum price of electric current sold or furnished to any consumer in the District of Columbia shall not exceed ten cents per kilowatt hour. If consumers other than the Government shall not pay monthly electric bills within ten days after the same shall have been presented, said companies may charge and collect from said consumer so failing to pay said bill as aforesaid eleven cents per kilowatt hour for the electric current furnished to said consumer during said month: *And provided further,* The right to amend, modify, or repeal the privileges granted in this section, and to further limit the prices herein specified, is hereby expressly reserved; any company charging or collecting an amount in excess of the rates prescribed in this section shall be deemed guilty of a misdemeanor, and shall pay to the District of Columbia the sum of fifty dollars for each and every offense, to be collected as other fines are collected in the District of Columbia. (Mar. 3, 1899, 30 Stat. 1053, ch. 422 § 1.)

CROSS REFERENCES

Criminal penalties for discriminatory or unreasonable rate, see §§ 43–902 to 43–904.

Illegal rates, see § 43–301.

Rates and rate making generally, see § 43–401.

NOTES TO DECISIONS

Discretion of commission

Ordinarily, in determining electric power rate, question whether smaller unit of electric power should be used as a basis for rate making is a matter of discretion for the regulatory agency. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

Rates, computation of

Normally, the unit for rate-making purposes for electricity is the entire inter-connected operating property of the utility, without regard to geographical subdivisions, though conditions may be such as to require or permit segregation of a smaller unit. *Leeman et al.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1952, 104 F. Supp. 553).

§ 43–1108. Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company.

The Commissioners of the District of Columbia are hereby authorized, in their discretion, to permit the Potomac Electric Power Company to make connections between its conduits and the conduits of the Washington Railway and Electric Company and all other companies controlled by the Washington Railway and Electric Company for the purpose of furnishing electric current through the said conduits for public and private uses, the use of said railway companies' conduits to be upon such terms as may be agreed upon between the said companies. (Apr. 27, 1904, 33 Stat. 376, ch. 1628 § 1.)

CROSS REFERENCE

Joint use of utility facilities, see § 43–302.

§ 43–1109. Repealed. Aug. 4, 1955, 69 Stat. 490, ch. 547, § 1.

Section, act Mar. 2, 1907, 34 Stat. 1134, ch. 2510, dealt with annual reports to Congress by companies, associations or corporations engaged in the manufacture and sale of electricity for illuminating or heating or power purposes or either.

CROSS REFERENCE

Reports of utility companies, see § 43–318.

Chapter 12.—GAS COMPANIES—SPECIAL ACTS

Sec.
43–1201. Laboratory for testing gas of Washington Gas Light Company.
43–1202. Additional laboratories for testing gas of Washington Gas Light and Georgetown Gas Light Companies—Payment of expenses incident thereto.
43–1203. Officer of company may be present at tests.
43–1204. Daily inspections—Reports.
43–1205. Removal of gas meters for neglect or refusal to pay amount due.
43–1206. Annual reports to Congress.
43–1207. Maximum rates for gas—Additional charge for nonpayment of bills.

§ 43–1201. Laboratory for testing gas of Washington Gas Light Company.

A laboratory shall be provided and fitted up by the Washington Gas Light Company, subject to the approval of the Public Service Commission, in the central part of the City of Washington, at a distance as near as may be, of two thousand feet from any gas-works, and furnished with suitable apparatus for the transaction of the business of the inspector and assistant inspectors of gas and meters, for which it is intended, and the laboratory shall be kept open on all business-days between the hours of nine o'clock in the forenoon and four o'clock in the afternoon: *Provided,* That the cost of fitting up said laboratory shall be paid for by each gas company in the District of Columbia in proportion to their sale of gas for the year 1873. (June 23, 1874, 18 Stat. 278, ch. 480, § 3; Mar. 3, 1893, 27 Stat. 543, ch. 199; Mar. 11, 1902, 32 Stat. 63, ch. 181; Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

CHANGE OF NAME

Section 21 of act, Aug. 30, 1964, Pub. L. 88–503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See section 2–2418.

CODIFICATION

Section consolidates section 3 of act June 23, 1874, parts of acts Mar. 3, 1893, and Mar. 11, 1902, and section 8 of Act Mar. 4, 1913.

CROSS REFERENCE

Other provisions concerning gas inspector and testing of meters, see § 43–603.

§ 43–1202. Additional laboratories for testing gas of Washington Gas Light and Georgetown Gas Light Companies—Payment of expenses incident thereto.

Two additional laboratories shall be provided and fitted up by the Washington Gas Light Company, subject to the approval of the Commissioners of the District of Columbia, and shall be furnished with suitable apparatus, to the satisfaction of the said Commissioners, at a total cost not to exceed one thousand dollars, for inspecting and testing the illuminating gas manufactured and distributed by the said Washington Gas Light Company and the gas meters used for measuring the gas supplied to consumers by the said Washington Gas Light Company. One of the said laboratories shall be located in the northwestern portion of the city of Washington and the other in the southeastern portion of said city, and the cost of providing and fitting up the said laboratories shall be paid for by the said Washington Gas Light Company. A laboratory shall be provided and fitted up by the Georgetown Gas Light Company, subject to the approval of the Commissioners of the District of Columbia, and shall be furnished with suitable apparatus, to the satisfaction of the said Commissioners at a total cost not to exceed one thousand dollars, for inspecting and testing the illuminating gas manufactured and distributed by the said Washington Gas Light Company and the gas meters used for measuring the gas supplied to consumers by the said Georgetown Gas Light Company: *Provided,* That the cost of providing and fitting up the said laboratory shall be paid by the said Georgetown Gas Light Company: *Provided further,* That the Washington Gas Light Company and the Georgetown Gas Light Company shall, at the beginning of each fiscal year, in proportion to their respective receipts from sales of gas for the fiscal year immediately preceding, provide in advance, by depositing with the collector of taxes of the District of Columbia, a sum sufficient to pay the necessary expenses of maintaining the service of inspecting and testing illuminating gas and gas meters, herein provided for, as estimated by the Commissioners of the District of Columbia, and not to exceed five hundred dollars per annum for each of the said additional laboratories. (Mar. 3, 1893, 27 Stat. 543, ch. 199.)

§ 43–1203. Officer of company may be present at tests.

The company, person or persons furnishing the gas may, if they see fit, on each occasion of the testing of the gas by the inspector, be represented by some officer, but such officer shall not interfere in the testing. (June 23, 1874, 18 Stat. 278, ch. 480, § 4, July 1, 1882, 22 Stat. 138, ch. 263, § 1.)

AMENDMENT

1882—Act July 1, 1882, abolished the office of assistant inspector.

§ 43–1204. Daily inspections—Reports.

Daily inspections, Sundays excepted, shall be made at any time after twelve o'clock noon and before twelve o'clock midnight, in the discretion of the inspector of gas and meters. (June 23, 1874, 18 Stat. 278, ch. 480, § 5; Mar. 3, 1893, 27 Stat. 543, ch. 199.)

AMENDMENT

1893—Act Mar. 3, 1893, changed the hours of inspection from between five and eleven o'clock in the afternoon to between twelve o'clock noon to twelve o'clock midnight.

CROSS REFERENCE

Right of access to make examinations and inspections, see § 43–601.

§ 43–1205. Removal of gas meters for neglect or refusal to pay amount due.

If any person or persons, supplied with gas, neglect or refuse to pay the amount due for the same, such company may stop the gas from entering the premises of such person or persons. In no case shall the officers, servants, or workmen of the company remove a meter from premises supplied by the company, unless by consent of the consumer, without first giving forty-eight hours' notice in writing by leaving the same at the premises of the consumers; and said removal shall take place only between the hours of eight o'clock in the forenoon and two o'clock in the afternoon. It shall be lawful for Congress at any time hereafter to alter, amend, or repeal this section. (June 23, 1874, 18 Stat. 280, ch. 480, §§ 13, 14.)

CROSS REFERENCE

Defective meter as defense, see § 43–604.

§ 43–1206. Annual reports to Congress.

Any association or corporation engaged in the manufacture and sale of gas for illuminating and fuel purposes in the District of Columbia, through its president or other duly authorized officer, shall make a sworn statement to Congress annually, on or before the 1st day of February in each year. Said report shall contain a detailed statement of the condition of the business of said association or corporation for the year ending December 31st next preceding, and such statement shall set forth the actual cost and also present value of the property of such association or corporation used in the conduct of its business, the amount of paid-up capital stock, the amount and character of the indebtedness of such association or corporation, the amount and cost of materials used in making gas, the amount of gas manufactured, the amount of gas sold, the average price per thousand cubic feet received for gas sold, the revenue from the sale of all by-products, the revenues from all other sources, the extensions and improvements made in the plant and works, the actual cost of the same, the amount expended for labor, the amount set aside for depreciation, the amount set apart for insurance and renewals, the amount paid out of earnings for betterments, the amount paid for betterments from other sources, the amount set aside and paid in interest and dividends, the surplus after paying the operating expenses and fixed charges, the statement of the operating expenses to be itemized and classified as is done by other public utility corporations, in the District of Columbia, the names of the stockholders

and the amount of the stock held in such association or corporation by each of them on December 31st next preceding the date of such report. (Mar. 2, 1907, 34 Stat. 1133, ch. 2510 § 1.)

CROSS REFERENCE

Reports generally, see § 43–318.

§ 43–1207. Maximum rates for gas—Additional charge for nonpayment of bills.

No part of any money appropriated by any Act shall be used for the payment to the Washington Gas Light Company or the Georgetown Gas Light Company for any gas furnished by said companies for use in any of the public buildings of the United States or the District of Columbia at a rate in excess of 70 cents per one thousand cubic feet.

The Washington Gas Light Company shall not charge or collect for gas furnished a private consumer in any part of the District of Columbia a rate in excess of 75 cents per one thousand cubic feet of gas so furnished: *Provided,* That if a consumer of gas other than the Government or the District of Columbia shall not pay monthly any gas bill within ten days after the same shall have been presented, said gas company may charge and collect from any such consumer so failing to pay said gas bill as aforesaid 10 cents additional for each one thousand cubic feet of gas represented by said bill: *And provided further,* That nothing contained in this section shall be construed as limiting or taking away any of the powers vested by law in the Public Service Commission of the District of Columbia.

The Georgetown Gas Light Company shall not be permitted to charge or collect more than 85 cents per one thousand cubic feet for gas for cooking, illuminating, or other purposes. (Sept. 1, 1916, 39 Stat. 716, ch. 433, § 6; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

CHANGE OF NAME

Section 21 of act, Aug. 30, 1964, Pub. L. 88–503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See section 2–2418.

CROSS REFERENCE

Rates and rate making generally, see § 43–401.

NOTES TO DECISIONS

Rates, computation of

Whatever formula is adopted by District of Columbia Public Utilities Commission for gas rate purposes, the commission's findings must be based on substantial evidence in the record. *Washington Gas Light Co.* v. *Baker* (1951, 188 F. 2d 11, 88 U.S. App. D.C. 115, certiorari denied 71 S. Ct. 571, 340 U.S. 952, 95 L. Ed. 686).

Gas rate making is primarily a legislative process, and District of Columbia Public Utilities Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Id.*

Chapter 13.—PRIVATE CONDUITS

Sec.

43–1301. Conditions under which private conduits may be laid.
43–1302. Refusal to remove conduits—Penalty.
43–1303. Right to alter, amend, or repeal reserved.
43–1304. Construction of tunnels and structures in Anacostia River.

§ 43–1301. Conditions under which private conduits may be laid.

The Commissioners of the District of Columbia are hereby authorized to grant permission to lay conduits for the transmission of electric power and pipes for the transmission of steam in alleys in the District of Columbia, under the following conditions, namely:

The conduits or pipes shall be laid entirely within a square or block, and shall not cross or enter any avenue, street, or highway.

The conduits and pipes shall be located as directed by said Commissioners and be laid under their inspection; and the cost of such inspection, together with the cost of replacing all improved pavements disturbed in connection with said work, shall be paid in advance by the party desiring to lay said conduits or steam pipes.

The conduits or pipes shall be used only to connect the premises owned and operated by the permittee, and no power or steam shall be supplied therefrom for any other purpose than the use of the permittee.

The permittee shall not rent the conduit or pipe or any portion thereof. (May 26, 1900, 31 Stat. 217, ch. 587, § 1.)

CROSS REFERENCE

Electrical conduits, provisions concerning, see § 43–1101 et seq.

§ 43–1302. Refusal to remove conduits—Penalty.

On violation of any of the provisions or restrictions of section 43–1301 the said Commissioners shall require the permittee, after thirty days' notice, to abandon the use of said conduits or pipes and remove them from the alley or alleys in which they are located, and if said permittee shall neglect or refuse to remove said conduits or pipes and place the surface of the alley in good condition within sixty days after the date of said notice, the said permittee shall be deemed guilty of a misdemeanor, and shall be liable to a fine of ten dollars for each and every day that said conduits or pipes are allowed to remain in the alley, or the said alley shall remain out of repair, which fine shall be recovered in the District of Columbia Court of General Sessions, in the name of said District, as other fines and penalties are now recovered in said court. (May 26, 1900, 31 Stat. 218, ch. 587, § 2; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 43–1303. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal sections 43–1301 and 43–1302. (May 26, 1900, 31 Stat. 218, ch. 587, § 3.)

§ 43–1304. Construction of tunnels and structures in Anacostia River.

The Secretary of the Army is authorized to permit the construction and operation of any intake and discharge tunnels and/or other structures in the

Anacostia River in so far as they affect navigable waters of the United States; and the Director of National Park Service is authorized, in consideration of the above-mentioned quitclaims to the United States, to convey, on behalf of the United States, to the owners of square 667 that portion of square east of 667 lying west of the direct southerly projection of the west line of Half Street as existing on June 15, 1932, north of U Street southwest; and said Director of National Park Service is authorized to permit the construction and operation of any pipe lines and intake and discharge tunnels, upon such terms and conditions as shall be fair and reasonable, under and on any lands owned or claimed by the Government of the United States lying in the above area and/or between the east line of Water Street, or other streets, and the Anacostia River. All areas conveyed by the United States to the owners of square 667 shall thereafter be assessed on the books of the assessor of the District of Columbia the same in all respects as other private properties in the District of Columbia (June 15, 1932, 47 Stat. 319, ch. 265, § 4.)

CHANGE OF NAME

The title of Secretary of War was changd to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, Title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, Title 10, Armed Forces, which in sections 3011–3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

TRANSFER OF FUNCTIONS

Director of Public Buildings and Public Parks of the National Capital was changed to Director of National Parks, Buildings and Reservations by Ex. Or. No. 6166, June 10, 1933. This in turn was changed to Director of National Park Service by act of March 2, 1934, 48 Stat. 389, ch. 38, § 1.

Chapter 14.—TELEGRAPH AND TELEPHONE COMPANIES

Sec.

43–1401. Additional telegraph and telephone wires prohibited on streets—Extensions.
43–1402. Removal of telephone poles and wires—Area of removal—Duties of Commissioners—Extension of conduits.
43–1403. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telephone companies.
43–1404. Penalties.
43–1405. Erection and maintenance of telephone poles in alleys—Poles outside designated limit—Temporary permits.
43–1406. Regulations for inspection—Ducts for use of fire and police wires.
43–1407. Repairs and renewals.
43–1408. Right to alter, amend, or repeal reserved.
43–1409. Removal of telegraph poles and wires—Duties of Commissioners—Extension of conduits.
43–1410. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telegraph companies
43–1411. Penalties.
43–1412. Erection and maintenance of telegraph poles in alleys—Poles outside designated limits—Temporary permits.
43–1413. Conduits in public parks or reservations.
43–1414. Regulations for inspection—Ducts for use of fire and police wires.
43–1415. Repairs and renewals.
43–1416. Right to alter, amend, or repeal reserved—Rights under 43 U.S.C. § 1 et seq. preserved.
43–1417. Rights to build and lay conduits not to be paid for in event of condemnation.

§ 43–1401. Additional telegraph and telephone wires prohibited on streets—Extensions.

The commissioners of the District of Columbia shall not permit or authorize any additional telegraph, telephone, electric lighting or other wires to be erected or maintained on or over any of the streets or avenues of the City of Washington: *Provided,* That the Commissioners of the District may, under such reasonable conditions as they may prescribe, authorize the wires of any electric light company existing on July 18, 1888, and then operating in the District of Columbia, to be laid under any street, alley, highway, footway or sidewalk in the District, whenever in their judgment the public interest may require the exercise of such authority—such privileges as may be granted hereunder to be revocable at the will of Congress without compensation and no such authority to be exercised after the termination of the Fiftieth Congress. (July 18, 1888, 25 Stat. 323, ch. 676, § 1.)

CROSS REFERENCES

Conduits in public parks and reservations, see § 43–1413.
Jurisdiction and control over public ways, see § 7–102.
Other provisions concerning electrical wiring, see § 43–1101 et seq.
Protection of life, health, and property, rules and regulations generally, see § 1–226 and notes.
Rules and regulations for construction of conduits, see §§ 43–1406, 43–1414.

NOTES TO DECISIONS

Existing lines

Under this section the Commissioners of the District might authorize the wires of any "existing telegraph, telephone or electric light company," to be laid under streets and alleys whenever public interest may exercise such authority. *Chesapeake & Potomac Tel. Co.* v. *Manning* (1902, 22 S. Ct. 881, 186 U. S. 238, 46 L. Ed. 1144).

§ 43–1402. Removal of telephone poles and wires—Area of removal—Duties of Commissioners—Extension of conduits.

All telephone poles and wires attached thereto not the property of the United States or the District of Columbia existing June 20, 1902, upon the streets and avenues within the section of the District of Columbia bounded by a line beginning at Second and B Streets southeast and running thence along B Street south, Third Street west, Missouri Avenue, Sixth Street west, B Street north, Twenty-third Street west, Rock Creek, Cincinnati Street, Columbia Road, Sixteenth Street west (extended), Park Street, Whitney Avenue, Eleventh Street west, R Street north, New Jersey Avenue, C Street north, and Second Street east to the point of beginning, except as hereinafter provided, shall from time to time, as may be prescribed by the Commissioners of said District, be taken down and removed. The work of taking down and removing said poles and wires shall be done under the direction of said Commissioners, and it is hereby made the duty of said Commissioners to enforce compliance with the provisions of sections 43–1402 to 43–1408, inclusive, as expeditiously as may be consistent with the public interests; and the said Commissioners are hereby empowered from time to time to authorize any individual, company, or corporation operating on June 20, 1902, and maintaining a telephone plant or system, partly overhead and partly underground, in the District of Columbia,

to extend and enlarge its system of underground conduits, subsidiaries, and manholes in or under any or all of the streets, avenues, alleys, lanes, or other public highways in said city and District as may be requisite and necessary for the purposes of sections 43–1402 to 43–1408, inclusive, and for the reception of such other cables and wires as may be reasonably required in the future by the growth of such individual, company, or corporation or to adequately meet the requirements of the public for telephone service. (June 20, 1902, 32 Stat. 393, ch. 1136, § 1.)

NOTES TO DECISIONS

Authority of commissioners

Commissioners of the District might authorize wires of telephone, telegraph or electric light company to be laid under streets and alleys whenever public interest may exercise such authority. *Chesapeake & Potomac Tel. Co.* v. *Manning* (1902, 22 S. Ct. 881, 186 U. S. 238, 46 L. Ed. 1144).

§ 43–1403. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telephone companies.

From time to time any individual, company, or corporation, maintaining and operating on June 20, 1902, a telephone plant or system in said District, partly overhead and partly underground, shall prepare and submit to the said Commissioners a plan or plans, or application or applications, in writing, showing the streets, avenues, alleys, lanes, and other public highways in or under which it is proposed to construct conduits, subsidiaries, or manholes, and giving the general dimensons, length, and course thereof, and before any such conduit, subsidiary, or manhole is constructed it shall be necessary to obtain the approval and permission of said Commissioners. Said Commissioners are empowered to require that all proposed conduits, subsidiaries, and manholes shall be constructed in accordance with the approved plan or permit; and upon the approval by said Commissioners of any such plan, or the issuing of any such permit, providing for the construction of underground conduits, subsidiaries, or manholes within the section in said District described in section 43–1402 the construction therein provided for shall be proceeded with diligently, and upon the completion thereof, or as soon thereafter as may be, without impairing the efficiency of the telephone service in said District, the individual, company, or corporation constructing such conduits, subsidiaries, or manholes shall place its cables and wires therein and take down and remove from the streets and avenues in which such conduits are constructed all poles and wires except such as said Commissioners may, in accordance with the provisions of sections 43–1402 to 43–1408, inclusive, permit to remain for the purpose of distributing wires for house connections. (June 20, 1902, 32 Stat. 393, ch. 1136, § 2.)

§ 43–1404. Penalties.

Any individual, company, or corporation owning and maintaining such poles and wires attached thereto on or over any street or avenue within the section of the District described in section 43–1402 who shall wilfully neglect or refuse to remove the same, as provided in section 43–1403, shall be liable to a penalty of not more than twenty-five dollars for each and every day during which such failure to remove said poles and wires shall continue, which amount may be recovered by the District of Columbia in any court of competent jurisdiction. (June 20, 1902, 32 Stat. 394, ch. 1136, § 3.)

§ 43–1405. Erection and maintenance of telephone poles in alleys—Poles outside designated limit—Temporary permits.

Said Commissioners are empowered to authorize the erection and maintenance of poles in the alleys of said city and District and the stringing thereon of telephone conductors from alley poles or housetop fixtures in one square to alley poles or housetop fixtures in another square for the purpose of enabling house connections to be made, and also to authorize the erection of telephone poles in the District of Columbia outside the limits of the section of said District described in section 43–1402 and the stringing thereon of telephone conductors for house connections or for connection with lines outside the District of Columbia; also to authorize the erection of such poles and the stringing thereon of such wires in the streets and avenues of said city and District in the parts thereof in which there are no public alleys, and in such other places as the public interests do not require that the lines be placed underground, or in places where it shall be deemed by said commissioners impracticable to advantageously place or operate such lines underground. During the progress of the work provided for in section 43–1402 said commissioners are also empowered to issue temporary permits for the erection and maintenance of poles and overhead conductors in places where the lines are ultimately to be placed underground, but where the work can not be immediately done because of the greater urgency of work in other localities, or for other reasons satisfactory to said commissioners; but in issuing such temporary permits said commissioners shall bear in mind the purpose and policy of sections 43–1402 to 43–1408, inclusive, which is to cause to be removed from the streets and avenues within the section of said District described in section 43–1402 all poles and wires attached thereto, except as hereinbefore provided, as expeditiously as may be without interfering with or impairing the efficiency of the telephone service in said District and without denying to the public reasonable telephone facilities at all times. (June 20, 1902, 32 Stat. 394, ch. 1136, § 4.)

§ 43–1406. Regulations for inspection—Ducts for use of fire and police wires.

All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of sections 43–1402 to 43–1408, inclusive, shall be subject to such reasonable regulations as the Commissioners of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires: *Provided,* That in all conduits so constructed such space shall be furnished to the District of Columbia as may be necessary for its fire-alarm or police-patrol wires or cables, carrying low potential currents of electricity, free of charge: *And provided further,*

That the number of ducts so reserved in any one conduit shall not be more than three. (June 20, 1902, 32 Stat. 395, ch. 1136, § 5.)

§ 43–1407. Repairs and renewals.

The said commissioners are empowered to authorize any such individual, company, or corporation owning and operating on June 20, 1902, any lines of street poles and wires and any alley poles or alley-pole line within the District of Columbia and outside of the section described in section 43–1402 to continue to maintain the same, with such repairs and renewals as may be necessary to keep them in good order and condition of repair, and to add thereto such poles and wires as may be necessary for the purpose of making house connections or for connecting with telephone lines outside the District of Columbia. (June 20, 1902, 32 Stat. 395, ch. 1136, § 6.)

§ 43–1408. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal sections 43–1402 to 43–1408, inclusive. (June 20, 1902, 32 Stat. 395, ch. 1136, § 7.)

§ 43–1409. Removal of telegraph poles and wires—Duties of Commissioners—Extension of conduits.

All telegraph poles and the wires attached thereto, not the property of the United States or the District of Columbia, upon the streets, avenues and alleys on March 3, 1905 within the fire limits of the District of Columbia, except as hereinafter provided, shall from time to time, as may be prescribed by the commissioners of said District, be taken down and removed. The work of taking down and removing said poles and wires shall be done under the direction of said commissioners, and it is hereby made the duty of said commissioners to enforce compliance with the provisions of sections 43–1409 to 43–1417, inclusive, as expeditiously as may be consistent with the public interests; and the said commissioners are hereby empowered, from time to time, to authorize any company or corporation on March 3, 1905, or thereafter operating and maintaining a telegraph plant or system in the District of Columbia to locate and construct a system of underground conduits, subsidiaries, and manholes in or under any or all of the streets, avenues, alleys, lanes, or other public highways in said District, as may be requisite and necessary for the purpose of sections 43–1409 to 43–1417, inclusive, and for the reception of such other conduits, cables, and wires as may be reasonably required in the future by the growth of such company or corporation or its assigns, or to adequately meet the requirements of the public for telegraph service. (Mar. 3, 1905, 33 Stat. 984, ch. 1415, § 1.)

§ 43–1410. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telegraph companies.

From time to time, any company or corporation, or its assigns, on March 3, 1905, or thereafter maintaining and operating a telegraph plant or system in said District, shall prepare and submit to the said commissioners a plan or plans or application or applications, in writing, showing the streets, avenues, alleys, lanes, and other public highways in or under which it is proposed to construct conduits, subsidiaries, or manholes, and giving the general dimensions, length, and course thereof; and before any such conduit, subsidiary, or manhole is constructed it shall be necessary to obtain the approval and permission of said Commissioners. Said Commissioners are empowered to require that all proposed conduits, subsidiaries, and manholes shall be constructed in accordance with the approved plan or permit; and upon the approval by said Commissioners of any such plan, or the issuing of any such permit, providing for the construction of underground conduits, subsidiaries, or manholes within the said limits described in section 43–1409, or in such part thereof as said Commissioners shall require and direct, the construction therein provided for shall be proceeded with diligently, and upon the completion thereof, or as soon thereafter as may be without impairing the efficiency of the telegraph service in said District, the company or corporation constructing such conduits, subsidiaries, or manholes shall place its cables and wires therein and take down and remove from the streets and avenues in which such conduits are constructed all poles and the wires thereon, except such as said commissioners may, in accordance with the provisions of sections 43–1409 to 43–1417, inclusive, permit to remain for the purpose of distributing wires for house or other connections. (Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 2.)

§ 43–1411. Penalties.

Any company or corporation now or hereafter owning and maintaining such poles and wires attached thereto on or over any street or avenue within the said limits described in section 43–1409, which shall willfully neglect or refuse to remove the same, as provided in section 43–1409, shall be liable to a penalty of not more than twenty-five dollars for each and every day during which such failure to remove said poles and wires shall continue, which amount may be recovered by the District of Columbia in any court of competent jurisdiction. (Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 3.)

§ 43–1412. Erection and maintenance of telegraph poles in alleys—Poles outside designated limits—Temporary permits.

Said Commissioners are empowered to authorize the erection and maintenance of poles in the alleys of said District, and the stringing thereon of wires or conductors for telegraph purposes from alley poles or house-top fixtures in one square to alley poles or house-top fixtures in one square to alley poles or of enabling house connections to be made, and to authorize the erection of poles and the stringing thereon of wires on and upon the streets and avenues of said District in the parts thereof in which there are no public alleys and in such places as the public interests do not require that the lines be placed underground, or in places where it shall be deemed by said commissioners impracticable to advantageously place or operate such lines underground. During the progress of the work provided for in section 43–1409 said commissioners are also empowered to issue temporary permits for the erection and maintenance of poles and overhead conductors in places where the lines are ultimately to be placed underground, where the work can not be immediately done because of the greater urgency of work in other localities, or for

other reasons satisfactory to said commissioners; but in issuing such temporary permits said commissioners shall bear in mind the purpose and policy of sections 43–1409 to 43–1417, inclusive, which is to cause to be removed from the streets and avenues within the said limits described in section 43–1409 all poles and wires attached thereto, except as hereinbefore provided, as expeditiously as may be without interfering with or impairing the efficiency of the telegraph service in said District and without denying to the public reasonable telegraph facilities. (Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 4.)

§ 43–1413. Conduits in public parks or reservations.

Any officer of the United States Government charged with the care, maintenance, and supervision of any public park or reservation may grant permission to any company or corporation maintaining and operating a telegraph plant or system in said District on March 3, 1905, or thereafter, upon application being made therefor, to construct conduits, subsidiaries, or manholes in said park or reservation, under such reasonable regulations as said officer may prescribe, unless, in the judgment of said officer, said construction will result in injury to the United States or its properties. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 4a.)

§ 43–1414. Regulations for inspection—Ducts for use of fire and police wires.

All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of sections 43–1409 to 43–1417, inclusive, shall be subject to such reasonable regulations as the Commissioners of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires: *Provided,* That in all underground conduits so constructed such space shall be furnished to the said District of Columbia and the United States as may be necessary for their telegraph, fire alarm, and police-patrol wires or cables carrying low potential currents of electricity, free of charge: *And provided further,* That the number of ducts so reserved in any one conduit shall not be more than two. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 5.)

§ 43–1415. Repairs and renewals.

The said commissioners are empowered to authorize any such company or corporation owning and operating lines of street poles and wires on March 3, 1905, or thereafter and any alley poles or alley-pole line or house-top wires within the said District and outside of the limits described in section 43–1409 to continue to maintain the same, with such repairs and renewals as may be necessary to keep them in good order and condition of repair, and to add thereto such poles and wires as may be necessary for their telegraphic purposes. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 6.)

§ 43–1416. Right to alter, amend, or repeal reserved—Rights under 43 U.S.C. § 1 et seq. preserved.

Congress reserves the right to alter, amend, or repeal sections 43–1409 to 43–1417, inclusive, but nothing herein shall abridge or lessen the rights granted telegraph companies under title sixty-five, section fifty-two hundred and sixty-three and the following, United States Revised Statutes of the Code of the Laws of the United States of America. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 7.)

REFERENCES IN TEXT

Sections 5236 to 5269, inclusive, of the Revised Statutes, referred to in the text, were formerly classified to 47 U.S.C. §§ 1—6 and 8, and were repealed July 16, 1947, 61 Stat. 327, ch. 256, § 1.

§ 43–1417. Rights to build and lay conduits not to be paid for in event of condemnation.

If at any time the District of Columbia or the National Government shall acquire, by purchase, condemnation proceedings, or otherwise, the property of any telegraph company in the District of Columbia, nothing shall then be paid for the rights accorded under sections 43–1409 to 43–1416, inclusive, to build and lay such conduits. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 8.)

Chapter 15.—WATER SUPPLY, ASSESSMENTS, AND RATES

Sec.

43–1501. Water mains, pipes, and fire plugs—Commissioners to have power to erect.
43–1502. Water department—Operations of, to be under direction of Engineer's Office.
43–1503. Water supply—Rules and regulations.
43–1504. Fiscal year of water department.
43–1505. Water-main taxes and rents to be uniform.
43–1506. Water registrar.
43–1507. Prevention of water waste.
43–1508. Use of Potomac water for mechanical and manufacturing purposes.
43–1509. Water supply in large quantities to be determined by meters maintained by consumers.
43–1510. Water mains and service sewers erected at discretion of Commissioners—Costs assessed against abutting property.
43–1511. Assessments for water mains.
43–1511a. Increased rate of assessment for laying mains.
43–1512. Assessor to give notice of assessments.
43–1513. Water main and service sewer assessments payable in three installments.
43–1514. Assessment of property in county of Washington for water mains and service sewers.
43–1515. Relevying assessments when assessments declared void.
43–1516. Disposal of funds received by collector of taxes.
43–1517. Definition—Service sewer.
43–1518. Refund of overpaid assessments.
43–1519. Refund of water rents erroneously paid.
43–1520. Water rents—Rates.
43–1520a. Increase in water rents.
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43–1520c. Commissioners to have authority to fix water rates.
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43–1521b. Discontinuance of water service for failure to pay water charges.
43–1521c. Lien for water charges.
43–1521d. Remedies not exclusive.
43–1522. Water rates not to be a source of revenue.
43–1523. Water tax to be a fund to defray cost of water distribution.
43–1524. Water rents from Washington Aqueduct to be applied to improvement of same.
43–1525. Fire plug tax.
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43–1527. Same—Cessation upon introduction of water.
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43–1529. Water not to be diverted beyond District.
43–1530. Commissioners authorized to deliver water in nearby Maryland—Contract.
43–1531. Delivery of water to Arlington County, Virginia.

Sec.
43–1531a. Delivery of water to Falls Church, Virginia, and adjacent areas—Installation expenses—Payments for water—Revocation of permit.
43–1531b. Investigation of distribution systems outside District of Columbia.
43–1531c. Acquiring of lands for pipe lines authorized.
43–1532. Acquisition of land and right of way for pipe lines.
43–1533. Potomac water to be furnished to charitable institutions without charge.
43–1534. Unlawful tapping of water pipe—Penalty
43–1535. Notification of violations.
43–1536. Penalty for damaging or defacing water pipes.
43–1537. Main pipes—Laying for use of public buildings.
43–1538. Unauthorized opening.
43–1539. District of Columbia water system defined.
43–1540. Loans authorized to expand water system.
43–1541. Water and water service supplied for the use of the Government of the United States.

CROSS REFERENCE

Annual payment of $1,000,000 by United States to the water fund of the District, see § 47–2501a.

§ 43–1501. Water mains, pipes, and fire plugs—Commissioners to have power to erect.

The Commissioners of the District of Columbia shall have the power to lay water mains and water pipes and to erect fire plugs and hydrants wherever the same may be in their judgment necessary for the public safety, comfort, or health. (R. S.. D. C., § 204; June 17, 1890, 26 Stat. 159, ch. 428.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 28 of the Board of Commissioners dated Apr. 3, 1953, now redesignated Organization Order No. 147, dated Aug. 19, 1965, established a Department of Sanitary Engineering headed by a Director. The department performed sanitary engineering services and operations for the District including water distribution, sanitary, storm, and combined sewer systems, sewage treatment, and collection and disposal of waste material. The Office of the Water Registrar and the previously existing Department of Sanitary Engineering were abolished and their functions transferred to this department. The redesignated order was issued pursuant to Reorganization Plan No. 5 of 1952. The plan and the redesignated order are set out in the Appendix to title 1, Administration.

CROSS REFERENCES

Annual estimate of expenses, see § 47–210.

Construction of sewers and water-mains under District of Columbia Alley Dwelling Act, see § 5–103.

Fees for connections to sewers, water-main, gas-main or other underground structure, see § 1–726.

Jurisdiction and control over public ways, see § 7–102.

NOTES TO DECISIONS

In general

By this act Congress enacted that the Commissioners of the District shall have the power to lay water mains, pipes, fireplugs, and hydrants for the public safety, comfort, or health. *Parsons* v. *District of Columbia* (1898, 18 S. Ct. 521, 170 U. S. 45, 42 L. Ed. 943). See, also, *Wight* v. *Davidson* (1901, 21 S. Ct. 616, 181 U. S. 371, 45 L. Ed. 900).

§ 43–1502. Water department—Operations of, to be under direction of Engineer's Office.

The operations of the water department of the District of Columbia shall be under the direction of the engineer's office of the District, subject to the control of the commissioners. (July 1, 1882, 22 Stat. 143, ch. 263, § 2.)

§ 43–1503. Water supply—Rules and regulations.

Full power is given to the commissioners to supply the inhabitants of the District with the Potomac water from the aqueduct mains or pipes laid in the streets and avenues by the United States; and to make all laws and regulations for the proper distribution of the same, subject to the provisions of this chapter, and to the control of the Chief of Engineers, as provided in section 51 of title 40, U. S. Code. The supply of Potomac water may be extended to points in the District beyond the limits of Washington upon like terms and conditions as are provided by law for the supply of the same in that city. (R. S., D. C., § 195; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3; June 10, 1879, 21 Stat. 9, ch. 16; Feb. 25, 1885, 23 Stat. 319, ch. 145; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

CODIFICATION

Section consolidates parts of acts June 20, 1874, June 11, 1878, June 10, 1879, Feb. 25, 1885, Feb. 11, 1895, and Rev. Stat. D.C., § 195.

CROSS REFERENCES

General limitation on power of Commissioners, see § 1–801.

Protection of life, health, and property rules and regulations generally, see § 1–226.

Sanitary sewage works, commissioner's authority to make regulations, see § 43–1618.

NOTES TO DECISIONS

Jurisdiction

United States possesses complete jurisdiction, both of a political and municipal nature, over the District of Columbia. *Parsons* v. *District of Columbia* (1898, 18 S. Ct. 521, 170 U. S. 45, 42 L. Ed. 943).

§ 43–1504. Fiscal year of water department.

The fiscal year of the water department of the District of Columbia shall conform to the regular fiscal year of the General Government; the rates shall be levied and collected at least once every twelve months, or whenever practicable in the judgment of the Commissioners, at least once every six months. (July 1, 1882, 22 Stat. 144, ch. 263, § 2; May 18, 1954, 68 Stat. 103, ch. 364, § 107.)

AMENDMENT

1954—Act May 18, 1954, struck the word "annually" following the word "collected" and substituted the words "at least once every twelve months or whenever practicable in the judgment of the Commissioners at least once every six months."

§ 43–1505. Water-main taxes and rents to be uniform.

Water-main taxes and water rents shall be uniform in said District. (June 10, 1879, 21 Stat. 9, ch. 16.)

§ 43–1506. Water registrar.

The water registrar shall perform such duties connected with the water department of the District as may be proper and necessary, under the direction of the commissioners. He shall give bonds for the faithful performance of his duty in the sum of ten thousand dollars. (Leg. Assem., Aug. 23, 1871, ch. 108, § 16; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3.)

CODIFICATION

Acts June 20, 1874, and June 11, 1878, confer upon and define the powers of the Commissioners.

TRANSFER OF FUNCTIONS

Reorganization Order No. 28 of the Board of Commissioners dated Apr. 3, 1953, now redesignated Organization Order No. 147, established a department of Sanitary Engineering headed by a Director. The department performed

sanitary engineering services and operations for the District including water distribution, sanitary, storm and combined sewer systems, sewage treatment, and collection and disposal of waste material. The office of the Water Registrar and the previously existing Department of Sanitary Engineering were abolished and their functions transferred to this department. The redesignated order was issued pursuant to Reorganization Plan No. 5 of 1952. The plan and the redesignated order are set out in the Appendix to title 1, Administration.

CROSS REFERENCE

General limitations on power of Commissioners, see § 1–801.

§ 43–1507. Prevention of water waste.

In order to prevent unnecessary waste of Potomac water, and in order to more fully enforce the laws in relation to the distribution of the same, the Chief of Engineers is authorized, after giving notice, to shut off the water when such notice shall be disregarded from any places where a waste of water is occurring. (R. S., D. C., § 214.)

§ 43–1508. Use of Potomac water for mechanical and manufacturing purposes.

The use of Potomac water for mechanical and manufacturing purposes, or for private fountains, street and pavement washers, shall be allowed only when, in the opinion of the Chief of Engineers, it will not be detrimental to the general distribution of water in the District of Columbia. (R. S., D. C., § 215; Feb. 25, 1885, 23 Stat. 319, ch. 145.)

§ 43–1509. Water supply in large quantities to be determined by meters maintained by consumers.

The supply of water to all manufacturing establishments, hotels, livery-stables, and other places requiring a large quantity, shall be determined by meters erected and maintained at the expense of the consumer. (R. S., D. C., § 216.)

§ 43–1510. Water mains and service sewers erected at discretion of Commissioners—Costs assessed against abutting property.

The Commissioners of the District of Columbia are authorized and directed, whenever in their judgment the same may be necessary for the public safety, health, comfort, or convenience, to construct water mains and service sewers in any street, avenue, road, or alley in the District of Columbia; and the assessor of said District shall levy assessments for the same against abutting property in the amount and manner hereinafter prescribed. (Apr. 22, 1904, 33 Stat. 244, ch. 1417, § 1.)

CROSS REFERENCES

Jurisdiction and control over public ways, see § 7–102.

Laying pipes in streets under the control of the United States, see § 7–1204.

Laying water mains and sewers on permit plan, see §§ 7–608, 7–609.

Special assessments, protests against, generally, see § 47–1101 et seq.

NOTES TO DECISIONS

Tort liability of district

District of Columbia has no immunity from consequences of its negligent operation of sewerage department. *Scull et al.* v. *District of Columbia. et al.* (1958, 250 F. 2d 767, 102 U. S. App. D. C. 104, certiorari denied 78 S. Ct. 703, 356 U. S. 920, 2 L. Ed. 2d 715).

For tort liability purposes, if installation of water mains was a "governmental" function when performed by District of Columbia, District would not be subject to suit. *Id.*

§ 43–1511. Assessments for water mains.

For laying or constructing water mains in the District of Columbia assessments shall be levied at the rate of $3 per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a water main shall be laid, and that for laying or constructing service sewers in the District of Columbia assessments shall be levied at the rate of $4 per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a sewer shall be laid: *Provided,* That assessments for water mains and service sewers in the case of lots or parcels of land not more than one hundred feet in depth shall be levied upon the fronts or rears of such lots or parcels of land, and not upon both the fronts and rears of such lots or parcels of land; but lots or parcels of land more than one hundred feet in depth, except corner lots, shall be assessed upon both their fronts and rears when water mains or service sewers are laid abutting the same: *Provided,* That corner lots shall be assessed for water mains and service sewers only on their short fronts with a depth of not exceeding one hundred feet; any excess of the other front over one hundred feet shall be subject to assessment, as hereinbefore provided: *Provided,* That the areas of all lots or parcels of land which have been assessed for water mains by the square foot under any previous Act of Congress, or of the late legislative assembly of the District of Columbia, shall not be again assessed for water mains: *Provided further,* That when the Commissioners of the District of Columbia shall deem it advantageous to lay water mains or service sewers on each side of any street, avenue, road, or alley assessments shall be levied at the rate, within the time and in the manner in this section provided for, against the lots abutting the side of the street, avenue, road, or alley in which the water main or service sewer is laid. (Aug. 11, 1894, 28 Stat. 275, ch. 253; Apr. 22, 1904, 33 Stat. 244, ch. 1417, § 2; Dec. 22, 1927, 45 Stat. 11, ch. 5; July 3, 1930, 46 Stat. 989, ch. 848; June 4, 1934, 48 Stat. 876, ch. 389, § 1; July 16, 1947, 61 Stat. 360, ch. 258; May 18, 1954, 68 Stat. 109, ch. 218, §§ 301, 302.)

AMENDMENTS

1954—Act May 18, 1954, amended the first sentence of the section by increasing the rate of assessment for water mains from $1.90 to $3.00 per linear foot, and the rate of assessment for service sewers from $1.50 to $4.00 per linear foot for service sewers and water mains constructed after June 30, 1954.

1947—Act July 16, 1947, fixed the rate of assessment for water mains at $1.90 per linear foot for water mains constructed on or after July 1, 1947.

1934—Act June 4, 1934, fixed the rate of assessment for service sewers at $1.50 per linear foot for sewers constructed on or after July 1, 1934.

1930—Act July 3, 1930, increased rate for water-mains to three dollars per linear foot.

1927—Act Dec. 22, 1927, provided that rates of assessment in effect on June 30, 1927, for laying or constructing water mains and service sewers in the District of Columbia under provisions of act of 1904 should continue in effect during the remainder of the fiscal year 1928 and thereafter.

1904—Act Apr. 22, 1904, amended section generally, and among other changes, included assessments for service sewers as well as water-mains.

NOTES TO DECISIONS

Excess of cost, assessment in

Assessment exceeding actual cost of the work is not bad where the laying of the main was a part of a water-system and the assessment included a fund to keep the system in efficient repair. *Parsons* v. *District of Columbia* (1898, 18 S. Ct. 521, 170 U.S. 45, 42 L. Ed. 943).

Frontage rule inapplicable

If the paving of an avenue be treated as an original improvement, converting a highway into a paved city street, its constitutional infirmities are emphasized by reason of the existence of physical conditions forbidding any equal, fair, or equitable application of the frontage rule of taxing benefits, and, if considered as a repair of the avenue, in the form of repaving, its validity must be condemned on theory that it taxes individual property fronting on the improvement for all or fixed portion of the expense, to exemption of all other property in the municipality. *Johnson* v. *Rudolph* (1927, 16 F. 2d 525, 57 App. D. C. 29.)

Necessity and benefits of work

This act must be deemed conclusive alike of the question of the necessity of the work, and of the benefits as against abutting property; and to open such questions for review by the courts, on the petition of any and every property holder, would create endless confusion; and when questions submitted to Commission, the inquiry becomes in its nature judicial. *Parsons* v. *District of Columbia* (1898, 18 S. Ct. 521, 170 U.S. 45, 42 L. Ed. 943). See, also, *Wight* v. *Davidson* (1901, 21 S. Ct. 616, 181 U. S. 900, 45 L. Ed. 900).

Powers of congress

Congress has the power to provide for assessments in the District of Columbia for the opening of streets. *Wight* v. *Davidson* (1901, 21 S. Ct. 616, 181 U. S. 371, 45 L. Ed. 900).

Congress of the United States has the entire control over the District for every purpose of government. *Sims* v. *Rives* (1936, 84 F. 2d 871, 66 App. D. C. 24).

§ 43–1511a. Increased rate of assessment for laying mains.

CODIFICATION

Section, act July 16, 1947, 61 Stat. 360, ch. 258, Act V, § 2, which established the rate of assessment for laying or constructing water mains in the District of Columbia, on and after July 1, 1947, at $1.90 per linear foot, is omitted as superseded by section 43–1511.

§ 43–1512. Assessor to give notice of assessments.

The assessor of the District of Columbia shall give notices as herein provided of the levying of assessments for water mains and service sewers. Assessments shall be levied within sixty days after the completion of the main or service sewer, and the owner or owners affected by such assessments shall be notified that the same have been levied by a notice which shall be served upon the owner of the lot or parcel of land if he or she be a resident of the District of Columbia, and his or her residence be known. If the owner be a nonresident or his or her residence be unknown, the notice shall be served on his or her agent or tenant. The service of such notice, where the owner or his or her agent or tenant resides in the District of Columbia, shall be personal or by leaving the same with some person of suitable age, either a member of his family or in his employ, at the residence or place of business of such owner, agent, or tenant; and return of such service, stating the manner thereof, shall be made in writing under oath and filed in the office of the assessor of the District of Columbia. If there be no agent or tenant known to said assessor, and the owner or owners be not residents of the District of Columbia, or if the owner be a resident of the District of Columbia and can not be found therein, and no person of suitable age as aforesaid can be found at his or her residence or place of business, notice shall be given by advertisement once a week for three successive weeks in some daily newspaper published in said District, and in said publication of said notice each several piece of property shall be described in a separate paragraph, and the cost of such advertisement shall be added to the amount of said assessment and collected in the same manner that said assessment is collected. (Apr. 22, 1904, 33 Stat. 245, ch. 1417, § 3.)

§ 43–1513. Water main and service sewer assessments payable in three installments.

Assessments for water mains and service sewers shall be payable in three equal installments, the first of which shall be due and payable without interest within thirty days from date of service of notice or of the last publication of notice as the case may be, the second within one year, and the third within two years from the date of assessment, and interest at the rate of six per centum per annum shall be charged on all amounts which shall remain unpaid at the expiration of thirty days from the date of service of notice or last publication as the case may be; but the owner of the property assessed may, at his option, at any time after the levying of such assessment, pay the same in full: *Provided,* That if any installment of any assessment for water main or service sewer levied under the provisions of sections 43–1510 to 43–1517, inclusive, shall not be paid when due and payable the property against which said assessment was levied may be sold for said delinquent installment at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if said installment shall not have been paid prior to said sale. (Apr. 22, 1904, 33 Stat. 245, ch. 1417, § 4.)

CROSS REFERENCE

Payment of taxes and special assessments on family dwellings, see § 47–901 et seq.

§ 43–1514. Assessment of property in county of Washington for water mains and service sewers.

Property in the county of Washington, not subdivided into blocks or lots, or both, shall not be assessed for water mains or service sewers until subdivided: *Provided,* That where houses are built on any unsubdivided land and connection is made with a water main or service sewer, assessment shall be made as herein provided for in the case of subdivided property by assessing a frontage of fifty feet on each side of said connection with a depth of one hundred feet, except that no double assessment shall be levied; said assessment to be levied within sixty days after said connection is made; and if such unsubdivided land is thereafter subdivided into blocks or lots, such lots shall be assessed as herein provided as to subdivided lands, but the fifty feet on each side of said connection, with a depth of one hundred feet, shall not be again assessed: *Provided further,* That assessments at the rate and in the manner herein provided for shall be levied against each lot or parcel of land abutting any water main or service sewer in all subdivisions of land, within sixty days after the recording of such subdivision in the office of the surveyor of the District of Columbia, except in cases

where said lots or parcels of land have been previously assessed for the same main or service sewer. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 5.)

§ 43–1515. Relevying assessments when assessments declared void.

The assessor of the District of Columbia is hereby authorized and directed in cases where water-main assessments, or assessments for service sewers, may be quashed, canceled, set aside, or declared void by the United States District Court for the District of Columbia, or may otherwise be canceled or set aside, by reason of an imperfect or erroneous description of the lot or parcel of ground against which the same shall have been levied, by reason of such tax or assessment not having been authenticated by the proper officer or by reason of a defective return of service of notice, or for any technical reason other than the right of the authorities of the District of Columbia to levy assessment or lay the main or service sewer in respect of which assessment was levied, to relevy such assessment at the rate and in the manner provided for in sections 43–1510 to 43–1517, inclusive: *Provided,* That such reassessment shall be made within sixty days from date of such cancellation. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 7; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 43–1516. Disposal of funds received by collector of taxes.

All sums received by the collector of taxes under the provisions of sections 43–1510 to 43–1517, inclusive, on account of assessments levied for the construction of service sewers shall be credited to the appropriation under which the sewer was constructed for the fiscal year in which such sums shall be received. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 8.)

§ 43–1517. Definition—Service sewer.

A service sewer within the meaning of the provisions of sections 43–1510 to 43–1517, inclusive, shall be a sewer with which connection may be directly made for the purpose of providing sewerage facilities to abutting property, and such sewers shall be so indicated on the records of the sewer division of the engineer department of the District of Columbia. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 9.)

§ 43–1518. Refund of overpaid assessments.

In all cases where a water-main has heretofore been or may hereafter be laid in a public street or way, and in order to secure the laying of such main the cost or a part thereof has been paid to the District of Columbia prior to the laying of said main by any person or corporation, there shall be repaid from time to time to such person or corporation, out of the collections from the assessment for such main, all of the amounts so paid over and above the assessment chargeable against the land owned or controlled by said person or corporation. (June 2, 1900, 31 Stat. 252, ch. 612, § 2.)

CROSS REFERENCE

Refund of taxes generally, see § 47–1016 et seq.

§ 43–1519. Refund of water rents erroneously paid.

The Commissioners of the District of Columbia are hereby authorized to cause all water rents erroneously paid after March 3, 1905, in the District of Columbia to be refunded in the manner prescribed by law for the refunding of erroneously paid taxes: *Provided,* That application for refund shall be made within two years after such erroneous payment. And after March 3, 1905, the said commissioners are authorized to cause to be refunded in the same manner and subject to the same limitations all money paid for water for any special purpose where the project is abandoned and the water not used, and for tapping water mains and for furnishing stopcock where the service is not rendered and the material is not furnished; and all money refunded under this section shall be paid from and charged to the water fund. (Mar. 3, 1905, 33 Stat. 912, ch. 1406.)

CROSS REFERENCE

Refund of taxes and assessments generally, see § 47–1016.

NOTES TO DECISIONS

Liability of collector of taxes

Where record showed that protest made upon payment of water bill was handed to water registrar with request that he show protest to commissioners, and there was no showing that collector of taxes took any part in the controversy or committed any of the acts which compelled the payment or that he had any notice that bill was being paid under protest no personal liability rested on collector upon showing that the collection was erroneously made. *Farrell* v. *Ward* (D. C. Mun. App. 1947, 53 A. 2d 46).

§ 43–1520. Water rents—Rates.

The following schedule of water rents in the District of Columbia shall be fixed by the commissioners of said District:

For the use of water for domestic purposes through unmetered services, $9.85 per annum for all tenements two stories high, or less, with a front width of sixteen feet, or less; for each additional front foot or fraction thereof greater than one-half, 62 cents; and for each additional story or part thereof, one-third of the charges as computed above. For business places that are not required to install meters under existing regulations, the rates in effect June 30, 1930, to be increased by 40 per centum per annum. For the use of water through metered services, a minimum charge of $8.75 per annum for seven thousand five hundred cubic feet of water, and 7 cents per one hundred cubic feet for water used in excess of that quantity. For water for building construction purposes when not supplied through a meter, 6 cents per one thousand brick and 3 cents per cubic yard of concrete, with a minimum charge of $1 for each separate building project. All water required for purposes which are not covered by the foregoing classifications shall be paid for at such rates as may be fixed by the Commissioners of the District of Columbia. (July 3, 1930, 46 Stat. 988, ch. 848.)

CROSS REFERENCE

Increase in water rents by 25 per centum, see § 43–1520a.

§ 43–1520a. Increase in water rents.

Water rents charged by the District of Columbia for water used in the District of Columbia on and after July 1, 1947, shall be increased 25 per centum over the rents now in effect. Whenever the application of this increase to an existing rate results in a rate with a fractional part of a cent, the rate shall be, if the fraction be one-half cent or more, the nearest higher amount not containing a fraction, and, if the fraction be less than one-half cent, the nearest lower amount not containing a fraction. In computing the rent for the consumption of water in excess of the minimum amount allowed by law for metered service, if the rent is charged for a period beginning prior to July 1, 1947, and ending thereafter, the rent for such excess consumption shall be prorated. (July 16, 1947, 61 Stat. 360, ch. 258, Art. V, § 1.)

§ 43–1520b. Additional charge on unpaid water bills.

CODIFICATION

Section, act June 27, 1942, 56 Stat. 458, ch. 452, § 1, relating to arrearage charges is omitted as superseded by § 43–1521a.

§ 43–1520c. Commissioners to have authority to fix water rates.

(a) The Commissioners are authorized, in their discretion, to fix from time to time, the rates charged by the District for water and water services furnished by the District water supply system. Such rates so fixed, whether involving one or more changes in rate, or one or more changes in the basic quantity of water to be supplied at a given rate, or the combined effect of both such changes, shall not, in any event, result in increasing by more than 33⅓ per centum the rates in effect on the day preceding the effective date of this section. In computing the charge for the consumption of water in excess of the minimum amount allowed for metered service, if such charge is for a period beginning prior to so fixing such rates and ending thereafter, the charge for such excess consumption shall be prorated on a monthly basis, in accordance with the rates prevailing in the respective periods. Nothing in this title shall be construed to modify the provisions of section 43–1530 relating to the delivery of water from the District water supply system to the Washington Suburban Sanitary Commission.

(b) Notwithstanding the provisions of subsection (a) of this section, the Commissioners are authorized, in their discretion, to increase the rates charged by the District for water and water services furnished by the District water supply system: *Provided,* That no such increase shall exceed 25 per centum of the rate in effect on January 1, 1961. (May 18, 1954, 68 Stat. 101, ch. 218, title I, § 101; Mar. 2, 1962, 76 Stat. 17, Pub. L. 87–408, § 501.)

AMENDMENT

1962—Section 501, act Mar. 2, 1962, amended section by inserting (a) at the beginning of the section and adding subsection (b) thereto.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 504, act Mar. 2, 1962, provided that amendments made to this section and sections 43–1606 and 43–1607 "shall become effective on the first day of the third month which begins after the date of enactment of this Act."

EFFECTIVE DATE

Section 109 of act May 18, 1954, provided that: "Sections 101 to 105 inclusive [this section and sections 43–1521a to 43–1521d], of this title shall take effect on the first day of the third month following its enactment [May 18, 1954]".

CROSS REFERENCE

Sanitary sewage works, commissioners' authority to make regulations, see § 43–1618.

§ 43–1521. Commissioners to have authority to collect water rates in advance.

The commissioners have authority to provide for the collection of water rates, in advance or otherwise, from the owner or occupants of all buildings or establishments using the water; and to provide for stopping the supply of water to any dwelling or establishment upon a failure to pay the rate, and to carry into full effect the provisions of this chapter. (R. S., D. C., § 197; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3.)

CODIFICATION

Acts June 20, 1874, and June 11, 1878, confer upon and define the powers of the Commissioners.

CROSS REFERENCES

Discontinuance of water service for failure to pay water changes, see, also, § 43–1521b.

General limitation on power of Commissioners, see § 1–801.

NOTES TO DECISIONS

Date of liability

Where plaintiff was highest bidder at a foreclosure sale of realty under a deed of trust, plaintiff became owner as of date of sale and not as of date of delivery of deed for purposes of determining when plaintiff should give notice to Water Registrar of District of Columbia of purchase of such property. *Urciolo* v. *District of Columbia* (D. C. Mun. App. 1951, 82 A. 2d 909).

Liability of prior tenant

A tenant, who became secondarily liable for water bill which accrued during prior tenancy by his failure to give written notice of acquiring control of premises within five days thereof as required by this section and order issued by Commissioners of District of Columbia, was entitled to pay accrued water rent without submitting to the cutting off of his water supply, and could look to prior tenant for indemnity regardless of prior tenant's lack of consent notwithstanding his protest. *Simmons* v. *Quick* (D. C. Mun. App. 1944, 37 A. 2d 656).

Fact that a tenant, by failing to give written notice of acquiring control of premises within five days thereof as required by this section and order issued by Commissioners of District of Columbia, became secondarily liable for water bill which accrued during a prior tenancy, did not relieve prior tenant of his primary liability. *Id.*

A tenant who was seeking reimbursement for water bill which accrued during a prior tenancy stood in the shoes of a creditor and could not recover more than was actually due by prior tenant. *Id.*

A purchaser of property could not be compelled to pay for water used by former occupants of purchased property either by sections 1519 to 1522 of this title regulating water system or regulations issued by commissioners pursuant thereto. *Farrell* v. *Ward* (D. C. Mun. App. 1947, 53 A. 2d 46).

Liability of purchaser

One purchasing property within District of Columbia without notifying Water Registrar may be compelled to pay full current water rates for property. *Urciolo* v. *District of Columbia* (D. C. Mun. App. 1951, 82 A. 2d 909).

Scope of official duties

District of Columbia officials acted within their authority in refusing to turn water on for new principal tenant of premises where owners of premises had not, for many years, paid, or secured to be paid, water rents, and having voluntarily paid such arrearages in order to secure water supply, tenant could not recover from such officials the

amount paid by him and damages claimed to have resulted from alleged conspiracy to illegally force him to pay such amount. *Quick* v. *District of Columbia* (D.C. Mun. App. 1952, 90 A. 2d 235).

Commissioners and water registrar, in requiring purchaser of property to pay for water used by former occupants of purchased property, were acting within scope of their official duties, and even though they made a mistake in exercise of judgment or acted on erroneous construction of the law, they could not be held personally liable to purchaser. *Farrell* v. *Ward* (D. C. Mun. App. 1947, 53 A. 2d 46).

Voluntary payment

A tenant who failed to give written notice of acquiring control of premises within five days thereof as required by this section and order issued by Commissioners of District of Columbia, and who was thereafter required to pay water bill which accrued during a prior tenancy upon municipal authorities' threatening suspension of water service, was not a mere "volunteer," so as to preclude recovery from prior tenant. *Simmons* v. *Quick* (D. C. Mun. App. 1944, 37 A. 2d 656).

§ 43–1521a. Additional charge on unpaid water bills.

An additional charge of 10 per centum shall be added to any water charge remaining unpaid after the expiration of thirty days from the date of rendition of a bill for such charge. (May 18, 1954, 68 Stat. 101, ch. 218, title I, § 102.)

EFFECTIVE DATE

Section effective on the first day of the third month after May 18, 1954, see section 109 of act May 18, 1954, set out as a note under section 43–1520c.

CROSS REFERENCES

Sanitary sewage works,
Charges for overdue bills and enforcement of liens, see § 43–1609.
Commissioners' authority to make regulations, see § 43–1618.

§ 43–1521b. Discontinuance of water service for failure to pay water charges.

The Commissioners are authorized to provide for the collection of water charges, in advance or otherwise, from the owner or occupant of any building, establishment, or other place furnished water or water service by the District, and to shut off the water supply to any such building, establishment, or other place upon failure of the owner or occupant thereof to pay such water charges within thirty days from the date of rendition of the bill therefor. Such authority to shut off the water supply may be exercised by the Commissioners regardless of any change in ownership or occupancy of such building, establishment, or other place. When the water supply to any such building, establishment, or other place has been shut off for failure to pay such water charges, whether the water supply to such building, establishment, or other place was shut off before or after the enactment of this title, the Commissioners shall not again supply such building, establishment, or other place with water until all arrears of water charges, together with penalties and the costs actually incurred in shutting off and restoring the water supply, are paid. (May 18, 1954, 68 Stat. 102, ch. 218, title I, § 103.)

EFFECTIVE DATE

Section effective on the first day of the third month after May 18, 1954, see section 109 of act May 18, 1954, set out as a note under section 43–1520c.

CROSS REFERENCE

Sanitary sewage works, charges for overdue bills and enforcement of liens, see § 43–1609.

§ 43–1521c. Lien for water charges.

The District shall have a continuing lien for water charges upon any land and the improvements thereon to which water or water service is or has been furnished. Such lien shall have priority over all other liens except liens for District taxes. If any water charges shall remain unpaid after the expiration of two years from the date of rendition of the bill for such charges, or two years from the effective date of this title, whichever is later, the property which has been furnished such water or water service may be sold for such unpaid water charges, together with penalties thereon and costs, at the next ensuing tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if such water charges, together with penalties thereon and costs, shall not have been paid in full prior to said sale. So much of the proceeds of said sale as represents said unpaid water charges shall be credited to the water fund of the District. (May 18, 1954, 68 Stat. 102, ch. 218, title I, § 104.)

EFFECTIVE DATE

Section effective on the first day of the third month after May 18, 1954, see section 109 of act May 18, 1954, set out as a note under section 43–1520c.

CROSS REFERENCE

Sanitary sewage works, charges for overdue bills and enforcement of liens, see § 43–1609.

NOTES TO DECISIONS

Police power

Act of Congress governing District of Columbia water system and providing that District with continuing lien for water charges upon any land and improvements thereon to which water service has been furnished represent valid exercise of police power. *R. Friedman* v. *District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 562).

Retroactive lien

Statute giving District of Columbia continuing lien for water charges upon any land and improvements thereon to which water or water service has been furnished did not operate to create retroactive lien for water furnished prior to its effective date or to compel owner to pay obligation of earlier owner for water charges before its effective date. *R. Friedman* v. *District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 562).

§ 43–1521d. Remedies not exclusive.

The remedies set forth in sections 43–1521a, 43–1521b, and 43–1521c are hereby declared to be cumulative and not exclusive. (May 18, 1954, 68 Stat. 102, ch. 218, title I, § 105.)

EFFECTIVE DATE

Section effective on the first day of the third month after May 18, 1954, see section 109 of act May 18, 1954, set out as a note under section 43–1520c.

CROSS REFERENCE

Sanitary sewage works, charges for overdue bills and enforcement of liens, see § 43–1609.

§ 43–1522. Water rates not to be a source of revenue.

The water rates levied in the District of Columbia shall never be a source of revenue other than as a means of keeping up to said District a supply of water, but shall constitute a fund exclusively for the maintenance, management, and repair of the system of water-distribution. (R. S., D. C., § 198; July 12, 1876, 19 Stat. 87, ch. 180, § 18; Feb. 25, 1885, 23 Stat. 319, ch. 145.)

CODIFICATION

Act 1876 extended water taxes, water rents, and taxation for water mains, over all parts of the District of Columbia, and act 1885 extended points of water supply beyond Washington and Georgetown.

NOTES TO DECISIONS

Governmental function

Circumstance that District was not permitted by Code to make profit on water sold would not convert function of selling water into purely governmental one, such as providing police force for protection of all, and District of Columbia could be held liable for negligent operation of motor vehicle by employee of District government in connection with installation of water mains. *Scull et al.* v. *District of Columbia et al.* (1958, 250 F. 2d 767, 102 U. S. App. D. C. 104, certiorari denied 78 S. Ct. 703, 356 U. S. 920, 2 L. Ed. 2d 715).

§ 43–1523. Water tax to be a fund to defray cost of water distribution.

The water tax authorized to be levied and collected by the provisions of this chapter shall constitute a fund to be used exclusively to defray the cost of distribution of the water, including all necessary fixtures and machines connected with such distribution. (R. S., D. C., § 203.)

§ 43–1524. Water rents from Washington Aqueduct to be applied to improvement of same.

All water rents derived from the Washington Aqueduct shall be applied to the improvement and repair of the same, and for no other purpose. (R. S., D. C., § 217.)

§ 43–1525. Fire plug tax.

To aid in the erection, maintenance, and efficiency of fire-plugs, a special annual tax may be levied on all buildings in the City of Washington within five hundred feet of any main water-pipe, into which, or the premises connected therewith, the water has not been introduced, and the owners or occupants of which do not pay any annual water-rate in accordance with law. (R. S., D. C., § 205; June 17, 1890, 26 Stat. 159, ch. 428.)

§ 43–1526. Same—Rates.

The fire-plug tax shall be levied with reference to the value of the building so taxed, and shall not be more than five dollars nor less than one dollar per year. (R. S., D. C., § 206.)

§ 43–1527. Same—Cessation upon introduction of water.

Whenever the water is introduced, in conformity with law, into any building or premises, the fire-plug tax thereon shall cease. (R. S., D. C., § 207.)

§ 43–1528. Same—Levy upon discontinuance of water service.

Whenever water is discontinued from any building or premises into which it has been introduced, such building shall be subject to the fire-plug tax from the date of the discontinuance of the water. (R. S., D. C., § 208.)

§ 43–1529. Water not to be diverted beyond District.

Except as provided in sections 43–1530 and 43–1531 no portion of the water conveyed or to be conveyed through or by means of the Washington Aqueduct, or any appurtenance thereof, shall be diverted to the supply or use of any building, premises or establishment located outside of the limits of the District of Columbia. (Mar. 3, 1893, 27 Stat. 544, ch. 199.)

§ 43–1530. Commissioners authorized to deliver water in nearby Maryland—Contract.

For the protection of the health of the residents of the District of Columbia and the employees of the United States Government residing in Maryland near the District of Columbia boundary, the Commissioners of the District of Columbia, upon the request of the Washington Suburban Sanitary Commission, a body corporate, established by chapter 313 of the acts of 1916 of the State of Maryland, or upon the request of its legally appointed successor, are authorized to deliver water from the water-supply system of the District of Columbia to said Washington Suburban Sanitary Commission or its successor for distribution to territory in Maryland within the Washington Suburban Sanitary District as designated in the aforesaid act, or any amendment thereto, and to connect District of Columbia water-mains with water-mains in the state of Maryland at such points at or near the District of Columbia line as may be agreed upon from time to time by the Commissioners of the District of Columbia and the Washington Suburban Sanitary Commission, under the conditions hereinafter named, namely:

That before such connections shall be made the said Washington Suburban Sanitary Commission or its legally-appointed successor shall secure authority from the Legislature of the state of Maryland to enter into an agreement with the said Commissioners of the District of Columbia outlining the conditions under which the service is to be rendered.

The agreement between the Commissioners of the District of Columbia and the said Washington Suburban Sanitary Commission or its legally appointed successor shall provide, among other things—

First. That the meters on each of said connections shall be located within the District of Columbia and shall remain under the jurisdiction of the commissioners of the District of Columbia.

Second. The rates at which water will be furnished, said rates to be based on the actual cost to the United States and the District of Columbia of delivering water to the points designated above, including an interest charge at 4 per centum per annum and a suitable allowance for depreciation.

Third. That payments for water so furnished shall be made through the collector of taxes of the District of Columbia at such times as the Commissioners of the District of Columbia may direct, said payments to be deposited in the Treasury of the United States as other water rents collected in the District of Columbia are deposited.

Fourth. That at no time shall the amount of water furnished the said Washington Suburban Sanitary Commission or its successor exceed the amount that can be spared without jeopardizing the interests of the United States or of the District of Columbia.

Fifth. That the Commissioners of the District of Columbia shall have at all times the right to investigate the distribution system in Maryland, and if, in their opinion, there is a wastage of water they shall have the right to curtail the supply to said

sanitary district to the amount of such wastage. (Mar. 3, 1917, 39 Stat. 1043, ch. 160; June 30, 1930, 46 Stat. 838, ch. 764; Apr. 14, 1932, 47 Stat. 79, ch. 100.)

CODIFICATION

This section, after having been amended by the act of June 30, 1930, 46 Stat. 838, ch. 764, was repealed and reenacted as set out in the text by the act of 1932.

§ 43–1531. Delivery of water to Arlington County, Virginia.

The Secretary of the Army is hereby authorized, in his discretion and subject to the approval of the Chief of Engineers, upon the request of the board of supervisors of Arlington County, Virginia, to permit the delivery of water from the Federal water supply pumping station at the Dalecarlia Reservoir to the Arlington County sanitary district, created by an act of the General Assembly of the state of Virginia, of March 15, 1922, and to connect the force main of said pumping station with the water main in Arlington County at the southerly end of the Chain Bridge: *Provided,* That all expenses of installing said connection and its appurtenances and any subsequent changes therein shall be borne by said Arlington County, which shall pay such charges for the use of such water as may be determined from time to time in advance by the Secretary of the Army, the payments to be made at such time and under such regulations as the Secretary of the Army may prescribe, all payments for the use of water to be deposited in the Treasury of the United States as other water rents collected in the District of Columbia are deposited: *And provided further,* That the Secretary of the Army may revoke at any time any permit for the use of said water that may have been granted. (Apr. 14, 1926, 44 Stat. 251, ch. 140 § 1.)

CHANGE OF NAME

The title of Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, Title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, Title 10, Armed Forces, which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§ 43–1531a. Delivery of water to Falls Church, Virginia, and adjacent areas—Installation expenses—Payments for water—Revocation of permit.

The Secretary of the Army, on the recommendation of the Chief of Engineers, United States Army, and the Board of Commissioners of the District of Columbia, is hereby authorized in his discretion, upon request of the town council of the town of Falls Church, Fairfax County, Virginia, or any other competent State or local authority in the Washington metropolitan area in Virginia, to permit the delivery of water from the District of Columbia water system at the Dalecarlia Filtration Plant, or at other points on said water system to the Falls Church water system for the purpose of supplying water for the use of said town and such adjacent areas as are now or shall hereafter be served by the water system of said town; or to any other competent State or local authority in said metropolitan area in Virginia. The Secretary of the Army is hereby further authorized, in his discretion and upon the recommendation of the Chief of Engineers, and said Board of Commissioners, to permit the delivery of such water through the water mains of Arlington County by a connection to Arlington mains at the southerly end of Chain Bridge, or to make connections with the Arlington County water system at one or more points along the boundary line of Arlington County: *Provided,* That all expense of installing any such connection or connections or other appurtenances and any subsequent changes therein shall be borne by said town of Falls Church, or such other communities of said metropolitan area requesting such services: *Provided further,* That all payments for water taken directly from the mains of the water supply system of the District of Columbia at the Dalecarlia Filtration Plant, or from other points on said water system, shall be made at such time and in such manner as the Secretary of the Army and said Board of Commissioners may prescribe; all such payments to be deposited in the Treasury of the United States as other water rents now collected in the District of Columbia are now deposited, but for water as may be supplied through the water mains of Arlington County, as hereinabove authorized, such payments shall be made by said Arlington County in the same manner as payments for water supplied for the use of said Arlington County: *Provided further,* That payment for water delivered to communities in said metropolitan area from or through the water mains of Arlington County shall be made to said county as may be mutually arranged on an equitable basis and as approved by the Secretary of the Army and said Board of Commissioners: *And provided further,* That the Secretary of the Army, directly or upon the request of the Board of Commissioners, may revoke at any time any permit for the use of said water that may have been granted. (June 26, 1947, 61 Stat. 181, ch. 149, § 1.)

CHANGE OF NAME

The title of Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, Title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, Title 10, Armed Forces, which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§ 43–1531b. Investigation of distribution systems outside District of Columbia.

The Secretary of the Army, through the Chief of Engineers, shall have the right at all times to investigate the distribution systems of any community outside the District of Columbia supplied with water from the said District of Columbia water system and if, in his opinion, there is an excessive wastage of water, he shall have the right to curtail the supply to said communities to the amount of such wastage. (June 26, 1947, 61 Stat. 182, ch. 149, § 2.)

CHANGE OF NAME

The title of Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, Title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, Title 10, Armed Forces, which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§ 43–1531c. Acquiring of lands for pipe lines authorized.

The Secretary of the Army or the said Board of Commissioners is hereby authorized to acquire by

purchase or condemnation all necessary lands, easements, and rights-of-way for pipe lines within the District of Columbia, needed for the purposes of section 43–1531a. (June 26, 1947, 61 Stat. 182, ch. 149, § 3.)

CHANGE OF NAME

The title of Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, Title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1956, enacted U.S. Code, Title 10, Armed Forces, which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

§ 43–1532. Acquisition of land and right of way for pipe lines.

The Secretary of the Army is hereby authorized to acquire by purchase or condemnation all necessary lands, easements, and rights of way for pipe lines within the District of Columbia to connect the force main of said pumping station with the water main in Arlington County as herein authorized. (Apr. 14, 1926, 44 Stat. 252, ch. 140, § 2.)

CHANGE OF NAME

The title of Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, 61 Stat. 501, ch. 343, Title 11. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of act Aug. 10, 1056, enacted U.S. Code, Title 10, Armed Forces, which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

CROSS REFERENCE

Condemnation generally, see § 16–1301 et seq.

§ 43–1533. Potomac water to be furnished to charitable institutions without charge.

The Commissioners of the District of Columbia are authorized to furnish Potomac water without charge to charitable institutions and such institutions as receive annual appropriations from Congress, to an amount to be fixed in each case by the said commissioners, not to exceed a rate of one hundred gallons per day for each inmate of said institutions; and for all water used beyond such an amount, to be ascertained by water meters installed and maintained at the expense of the consumer, the institution shall be charged at the prevailing rate for the use of water in the District of Columbia, which shall be collected in the manner prescribed for the collection of water rents. The said commissioners are further authorized to furnish Potomac water without charge to churches to an amount to be fixed in each case by the said commissioners, and any amount used in excess of the amount allowed, to be ascertained in the manner aforesaid, shall be charged and collected as hereinbefore described. For the purposes of this section a charitable institution is one whose objects are primarily eleemosynary; and nothing herein contained shall be so construed as to include educational institutions other than charity schools wholly supported by voluntary contributions or institutions supported wholly or in part by Congressional appropriation. (Feb. 23, 1905, 33 Stat. 742, ch. 742, § 1.)

§ 43–1534. Unlawful tapping of water pipe—Penalty.

The unlawful tapping of any water pipe laid down in the District by authority of the United States is a misdemeanor and an indictable offense; and any person convicted of such offense in the criminal court of the District shall be subject to a fine not exceeding five hundred dollars, or to imprisonment for a term not exceeding one year. (R. S., D. C., § 218.)

CROSS REFERENCE

Unauthorized tapping or opening of mains or pipes laid by the Federal Government, penalty, see 40 U.S.C. §§ 56, 43–1538.

§ 43–1535. Notification of violations.

It is the special duty of the Chief of Engineers to bring to the notice of the attorney of the United States for the District of Columbia, or to the grand jury, any infraction of section 43–1534. (R. S., D. C., § 219.)

§ 43–1536. Penalty for damaging or defacing water pipes.

Every person who maliciously breaks, injures, defaces, or destroys any main or pipe, bend, branch, valve, hydrant, service-pipe, or any other fixture used for the distribution of water throughout the streets and avenues, or for its introduction into the houses, tenements, or buildings of the District of Columbia, shall be punishable by imprisonment in the District jail for not more than two years. (R. S., D. C., § 220; Feb. 25, 1885, 23 Stat. 319, ch. 145.)

CODIFICATION

Act Feb. 25, 1885, provides: "And hereafter the supply of Potomac water may be extended to points in the District beyond the limits of Washington and Georgetown upon like terms and conditions as are provided by law for the supply of the same in those cities."

§ 43–1537. Main pipes—Laying for use of public buildings.

No greater number of main pipes of the Washington Aqueduct shall be laid at the expense of the United States than are sufficient to furnish the public buildings, offices, and grounds with the necessary supply of water. The cost of any main pipe, for the supply of water to the inhabitants of Washington, must be paid by the District of Columbia, in the manner provided by law. (R. S., U. S., § 1805; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

CODIFICATION

Act Feb. 11, 1895, provides in part: "All general laws, ordinances and regulations of the city of Washington be, and the same are hereby, extended and made applicable to that part of the District of Columbia formerly known as the city of Georgetown."

§ 43–1538. Unauthorized opening.

No person, unless by consent of the Chief of Engineers, shall tap or open the mains or pipes laid or hereafter to be laid by the United States, under a penalty of not less than $50 nor more than $500. (R.S., U.S., § 1803.)

CODIFICATION

Section is also classified to 40 U.S.C. § 56.

§ 43–1539. District of Columbia water system defined.

As used in section 43–1540, unless the context otherwise requires—

(a) "Commissioners" means the Board of Commissioners of the District of Columbia.

(b) "District of Columbia water system" or "water system" means any and all of the facilities used or

to be used for the supply of raw or partly purified water wherever situated and all of the facilities used or to be used for the distribution of purified water situated within the District of Columbia which are operated by the District of Columbia Water Division or the Washington Aqueduct Division of the Washington District of the Corps of Engineers, Department of the Army, or both. (June 2, 1950, 64 Stat. 195, ch. 218, § 1.)

§ 43–1540. Loans authorized to expand water system.

(a) The Commissioners of the District of Columbia are hereby authorized to accept loans for the District of Columbia from the United States Treasury and the Secretary of the Treasury of the United States is hereby authorized to lend to the Commissioners of the District of Columbia, such sums as may hereafter be appropriated, to finance the expansion and improvement of the water system when sufficient funds therefor are not available from the District of Columbia water fund established by this chapter: *Provided,* That the total principal amount of loans made under the provisions of this section shall not exceed $35,000,000: *And provided further,* That a loan for use in any fiscal year must first be specifically requested of the Congress in connection with the budget submitted for the District of Columbia for that fiscal year, with a full statement of the work contemplated to be done and the need thereof, and must be specifically approved by the Congress. Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in full in the Treasury of the United States to the credit of the said District of Columbia water fund.

(b) The loans authorized under this section, or any parts thereof, shall be advanced to the Commissioners on their requisitions therefor and shall be available to the Commissioners or the Chief of Engineers, Department of the Army, for the performance of the said expansion and improvement of the water system, and shall be available until expended.

(c) Any loan advanced pursuant to this section shall be repaid to the Secretary of the Treasury in substantially equal annual payments, including principal and interest, within a period of thirty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to the Water Fund: *Provided,* That any such loan advanced prior to May 18, 1954, shall, for the purpose of determining the time when repayment thereof shall begin, be deemed to have been credited to the Water Fund on May 18, 1954, and interest accrued on any such loan advanced prior to May 18, 1954, shall be paid at such time and in such manner as the Secretary of the Treasury shall determine: *Provided further,* That the Commissioners may, in their discretion, make repayments in larger amounts at any time during the life of any loan advanced pursuant to this section. Interest on such loans shall begin to accrue as of the dates the respective advancements are credited to the Water Fund.

(d) Loans advanced pursuant to this section during any six-month period (beginning with the six-month period ending June 30, 1953) shall be at a rate of interest determined by the Secretary of the Treasury as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowings at a maturity approximately equal to one-half of the period of time the loan is outstanding.

(e) Moneys for the payments to the United States Treasury herein required shall be included in the budget estimates of the Commissioners of the District of Columbia, and shall be payable from the water fund. (June 2, 1950, 60 Stat. 195, ch. 218, § 2; May 18, 1954, 68 Stat. 103, ch. 218, § 108.)

AMENDMENTS

1954—Act May 18, 1954, amended subsection (a) by inserting "$35,000,000" in lieu of "$23,000,000", subsections (c) and (d) so as to change repayment and interest provisions so that all loans under the act of June 2, 1950, are repaid within a 30-year period beginning the second fiscal year after the loans are received, with interest at a rate which is equivalent to the cost of money to the Treasury,

Subsection (e) was amended by striking "beginning with the budget estimates for fiscal year 1961" from the subsection following the words "District of Columbia".

CROSS REFERENCE

Sanitary sewage works, commissioners' authority to make regulations, see § 43–1618.

§ 43–1541. Water and water service supplied for the use of the Government of the United States.

(a) All water and water services furnished from the District water supply system through any connection thereto for direct use by the Government of the United States or any department, independent establishment, or agency thereof, situated in the District, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for at the rates for the furnishing and readiness to furnish water applicable to other water consumers in the District. All water and water services furnished from the District water supply system through any connection thereto for direct use by the Government of the United States or any department, independent establishment, or agency thereof, situated outside the District in the States of Maryland or Virginia, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for at rates comparable to those which may be in effect and charged to State, municipal, or county agencies or other political authorities or jurisdictions within the respective States wherein said Federal facilities may be situated for similar water service from the District water supply system: *Provided,* That conditions as to water pressure, quantity, rates of demand, and points of connection available or permissible at any time for service outside the District, if any, shall be fixed by the Commissioners so as to fully protect the prior interests of water consumers within the District: *Provided further,* That as a condition of service, at each point of Federal connection to the water system of the District for service outside the District there shall be installed and maintained at the expense of the department, independent establishment, or agency of the United States which is to use water therefrom a suitable meter or meters and incidental vaults, valves, piping

and recording devices, and such other equipment as the Commissioners in their discretion deem necessary to control and record the use of water through each such connection. Payment shall be made as provided in subsection (b) of this section. The provisions of sections 43–1521a, 43–1521b, and 43–1521c, relating, respectively, to enforcement of payment for water charges by penalty charge for late payment, by shutting off of the water supply for nonpayment, and the imposition of lien and sale of property, shall not apply in any case where water or water service is furnished to a building, establishment, or other place owned by the Government of the United States and occupied by a department, independent establishment, or agency thereof.

(b) For the purpose of effectuating the provisions of subsection (a) of this section, there shall be included annually in the budget estimates of the Commissioners the value, as determined by the Commissioners, of the water and water services furnished to the United States during the most recent preceding fiscal year for which such value can be determined, based on the water rates prevailing during the period of consumption, and there shall be appropriated annually for the District to the credit of the said Water Fund, out of any money in the Treasury not otherwise appropriated (to be advanced on July 1 of each fiscal year beginning July 1, 1954), a sum corresponding to the value of the water and water services furnished the United States. (May 18, 1954, 68 Stat. 102, ch. 218, title I, § 106; Sept. 30, 1966, 80 Stat. 857, Pub. L. 89–610, title V, § 503.)

AMENDMENT

1966—Act Sept. 30, 1966, was amended by repealing the fourth sentence of subsec. (a), which provided: "Whenever any payment authorized by this section is made, such payment shall be in lieu of so much of the annual payment authorized by section 47–2501a, as pertains to the Water Fund of the District".

SEVERABILITY OF PROVISIONS; RULES AND REGULATIONS

For severability of provisions of act Sept. 30, 1966, Pub. L. 89–610, which amended subsec. (a) of this section by repealing fourth sentence thereof, and for authority to make rules and regulations to carry out provisions of such act, see §§ 1004 and 1005 of such act, set out as a note under § 25–124.

CROSS REFERENCE

Sanitary sewage works, commissioners' authority to make regulations, see § 43–1618.

Chapter 16.—SANITARY SEWAGE WORKS

Sec.
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DULLES INTERNATIONAL AIRPORT SANITARY SEWER

43–1620. Commissioners authorized to develop plan for interceptor and sewer line.
43–1621. Potomac interceptor—Acquisition of rights-of-way—Plans and specifications—Operation and maintenance of regional sanitary sewer system—Charges for use of interceptor—Deposit of funds.
43–1622. Authorization of appropriations.
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43–1624. Acquisition of land in Maryland or Virginia for Potomac interceptor—Title to and jurisdiction over land—Condemnation proceedings.

§ 43–1601. Definitions.

For the purposes of this chapter—

(a) The term "sanitary sewage" means (1) domestic sewage with storm and surface water limited; (2) sewage discharging from sanitary conveniences; (3) commercial or industrial wastes; and (4) water supply after it has been used.

(b) The term "stormwater sewage" means liquid flowing in sewers resulting directly from precipitation.

(c) The term "combined sewage" means sewage containing both sanitary sewage and stormwater sewage.

(d) The term "sewer" means a pipe or conduit carrying sewage.

(e) The term "sanitary sewer" means a sewer which carries sanitary sewage.

(f) The term "stormwater sewer" means a sewer which carries stormwater sewage.

(g) The term "combined sewer" means a sewer which carries both sanitary sewage and stormwater sewage.

(h) The term "sanitary sewage works" means a system of sanitary and combined sewers, appurtenances, pumping stations, and treatment works for conveying, treating, and disposing of sanitary sewage.

(i) The term "stormwater sewer system" means a system of sewers, appurtenances, and pumping stations for conveying and disposing of stormwater sewage.

(j) The term "combined sewer system" means a system of sewers and appurtenances conveying both sanitary sewage and stormwater sewage. (May 18, 1954, 68 Stat. 104, ch. 218, title II, § 201.)

SHORT TITLE

1954—Section 1 of act May 18, 1954, provided in part: "That (a) this Act, divided into titles and sections, may be cited as the 'District of Columbia Public Works Act of 1954'."

SEPARABILITY OF PROVISIONS

Section 1702 of act May 18, 1954, the District of Columbia Public Works Act of 1954, provided that:

"If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act, and the applicaton of such provision to other persons or circumstances, shall not be affected thereby."

The District of Columbia Public Works Act of 1954 has been classified to the District of Columbia Code in the following sections: 7–132, 7–133, 7–901, 25–124, 25–138, 40–102, 40–103, 43–1504, 43–1520c, 43–1521a, 43–1521b, 43–1521c, 43–1521d, 43–1540, 43–1541, 43–1601, 43–1602, 43–1603, 43–1604, 43–1605, 43–1606, 43–1607, 43–1608, 43–1609, 43–1610, 43–1611, 43–1612, 43–1613, 43–1614, 43–1615, 43–1616, 43–1617, 46–1618, 47–312, 47–313, 47–501a, 47–1203, 47–1206, 47–1208, 47–1209, 47–1210, 47–1211, 47–1567b, 47–1701, 47–2331, 47–2501a, 47–2501b, 47–2601, 47–2602, 47–2604, 47–2605, 47–2701, 47–2702, 47–2705, 47–2802.

CURRENT APPROPRIATIONS

Section 205 of act May 18, 1954, provided that:

"Notwithstanding the provisions of this title [this chapter] any current appropriation available to the District for the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District shall remain available for the purposes for which appropriated."

§ 43–1602. D. C. Sanitary Sewage Works Fund.

There is hereby created in the Treasury of the United States a special fund which shall be known as the D. C. Sanitary Sewage Works Fund, and which shall be composed of such sums as shall be deposited to the credit of such fund, including, but not limited to, sums received by the Commissioners under the provisions of sections 43–1510 to 43–1517, on account of assessments levied for the construction of sewers and including any payment made to the District by any governmental agency of the States of Maryland or Virginia on account of any sewer service furnished any such agency by the District. (May 18, 1954, 68 Stat. 104, ch. 218, title II, § 202.)

§ 43–1603. Use of the D. C. Sanitary Sewage Works Fund.

Subject to appropriations, the D. C. Sanitary Sewage Works Fund shall be available for use by or under the direction and control of the Commissioners for—

(a) the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District, including all expenses;

(b) payment of a portion of such administrative expenses as may not be wholly allocated to the sanitary sewage works or to any other sewage works of the District, but which expenses are incurred in connection with the operation of the sanitary sewage works and either or both the stormwater sewer system and the combined sewer system. The portion of such expenses to be paid from the D. C. Sanitary Sewage Works Fund shall be fixed from time to time by the Commissioners at such a percentage of the total of such expenses for the said sewer systems as the Commissioners, in their discretion, may determine;

(c) payment of such portion of all expenses for the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the combined sewer system of the District as the Commissioners, in their discretion, determine to be attributable to the sanitary sewer function of such combined sewer system;

(d) payment of the District's contribution to the expenses of the Interstate Commission on the Potomac River Basin;

(e) payments by the District to agencies in the State of Maryland providing services to the District for conveying, treating, or disposing of sanitary sewage: *Provided,* That the said fund shall not be available to pay the cost of providing sewage service to institutions of the District located in the State of Maryland;

(f) payments to the General Fund and other funds of the District for such expenses or estimated expenses as are or may be incurred in the administration of this chapter;

(g) payment to the United States Treasury of the interest, in accordance with the provisions of this chapter, on loans to the District for such Sanitary Sewage Works Fund;

(h) repayment to the United States Treasury of the principal amount of each loan made to the District in accordance with the provisions of this chapter, and of any advancements made to the District in accordance with the provisions of section 204 of this chapter; and

(i) refund of part or all of any sanitary sewer service charges erroneously paid: *Provided,* That application for refund shall be made within two years after such erroneous payment. (May 18, 1954, 68 Stat. 104, ch. 218, title II, § 203.)

§ 43–1604. Advances for sanitary sewage works—Reimbursement for amounts advanced.

The Secretary of the Treasury, notwithstanding the provisions of the District of Columbia Appropriation Act, approved June 29, 1922 (42 Stat. 668), is authorized and directed to advance, on the requisition of the Commissioners, made in the manner now prescribed by law, out of any money in the Treasury of the United States not otherwise appropriated, such sums as may be necessary, from time to time, to meet the expenses of the District in connection with the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District, as authorized by Congress, and such amounts so advanced shall be reimbursed by the said Commissioners to the Treasury out of the moneys deposited to the credit of the D. C. Sanitary Sewage Works Fund. (May 18, 1954, 68 Stat. 105, ch. 218, title II, § 204.)

§ 43–1605. Service charges for sanitary sewer service—Authority of Commissioners.

The Commissioners are authorized to establish charges for the provision of sanitary sewer service, such charges to be collected in the same manner and at the same time as water charges are collected, and to be paid into the D. C. Sanitary Sewage Works Fund. (May 18, 1954, 68 Stat. 106, ch. 218, title II, § 206.)

EFFECTIVE DATE

Section 219 of act May 18, 1954, provided that: "The provisions of sections 206 to 211, inclusive, [this section, and §§ 43–1606 to 43–1610] of this title shall become effective on the first day of the third month following the enactment of this Act [May 18, 1954]."

§ 43–1606. Methods of determination of sanitary sewer service charges.

The sanitary sewer service charges established under the authority of this chapter shall be based on the water consumption of, and water service to, the properties served, and be determined by one of the following methods:

(a) Where water is supplied from the District water supply system at meter rates, the Commissioners shall establish the sanitary sewer service charge as a percentage of the water charge applicable in the District, but such percentage shall not exceed 75 per centum of the water charge.

(b) Where water is supplied from the District water supply system, which water is not measured by meter, but is supplied at special business and miscellaneous rates, the Commissioners shall establish the sanitary sewer service charge at a percentage of such special business and miscellaneous rates, but such percentage shall not exceed 75 per centum of such rates.

(c) For each property using water, all or part of which is from a source or sources other than the District water supply system, the Commissioners shall establish a sanitary sewer service charge separate from and in addition to any sanitary sewer service charge levied under paragraph (a) or (b) of this section. Such separate or additional sanitary sewer service charge shall be measured by the quantity of water from the source or sources other than the District water supply system discharged into the District sanitary sewer system from said property. The owner or occupant of each such property shall install and maintain, without cost to the District, a meter or meters to measure the quantity of water received from other than the water supply system of the District, and the sanitary sewer service charge based upon water received from other than the water supply system of the District shall be the same in amount as would be paid by the owner of a metered property receiving the same quantity of water from the water supply system of the District. No meter shall be installed or be used for such purpose without the approval of the Commissioners. In the event the owner or occupant of property fails or refuses to furnish and properly maintain such meter or meters as are prescribed herein in the manner required by the Commissioners, then the supply of water from the District water supply system to the property or premises may be suspended by the Commissioners and the said supply shall not be restored until the metering of such supplementary water source has been accomplished by the owner or occupant to the satisfaction of the Commissioners, and any costs devolving upon the District as a result of the suspension of service from the District water supply system shall be paid to the District prior to the restoration of water service from the District water supply system.

(d) Wherever a property upon which a sanitary sewer service charge is imposed uses water from the water supply system of the District for an industrial or commercial purpose in such manner that the water so used is not discharged into the sanitary sewage works of the District, the quantity of water so used and not discharged into the sanitary sewage works of the District may be excluded in determining the sanitary sewer service charge on such property, if such exclusion is previously requested in writing by the owner or occupant thereof. Upon such request, the quantity of water so used and not discharged into the sanitary sewage works of the District shall be measured by a device or devices approved by the Commissioners, installed and maintained without cost to the District, and the sanitary sewer service charge to be imposed on such property shall be not more than 75 per centum of the water charge which would have been charged such property if the amount of water so used and not discharged into the sanitary sewage works of the District had not been included in the amount of water used by such property: *Provided,* That all water from the water supply system of the District used by such property shall be paid for at established rates, whether or not such water is discharged into the sanitary sewage works of the District. Where in the opinion of the Commissioners, it is not practicable to install a measuring device to determine continuously the quantity of water used for such industrial or commercial purposes and not discharged into the sanitary sewage works of the District, the Commissioners shall determine periodically, in such manner and by such methods as the Commissioners may prescribe, the quantity of water from the water supply system of the District discharged into the sanitary sewage works of the District, and the sanitary sewer service charge shall be based on such estimated quantity of water at the percentage authorized by this paragraph. Any dispute as to such estimated amount shall be decided by the Commissioners and such decision shall be final; and in the event the owner or occupant fails to furnish and maintain such measuring devices or to facilitate the periodic determinations by the Commissioners as prescribed herein, then the privilege of excluding some portion of the water used from the District water supply system from the charges for sanitary sewer service shall be forfeited and the charges for sanitary sewer service shall be based on the full amount of the water used from the District water supply system. (May 18, 1954, 68 Stat. 106, ch. 218, title II, § 207; Mar. 2, 1962, 76 Stat. 18, Pub. L. 87–408, § 502.)

AMENDMENT

1962—Section 502, act Mar. 2, 1962, 76 Stat. 18, Pub. L. 87–408, amended section by striking "60 per centum" wherever same appeared in this section and substituted in lieu thereof "75 per centum".

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 43–1520c.

EFFECTIVE DATE

Section effective on the first day of the third month following enactment of act May 18, 1954, see section 219 of act May 18, 1954, set out as a note under section 43–1605.

§ 43–1607. Persons obligated to pay sanitary sewer service charge.

(a) The owner or occupant of each building, establishment, or other place in the District connected with any District sewer conducting sanitary sewage shall pay the sewer service charge authorized by this chapter.

(b) If the sanitary sewer service charge imposed by this chapter is based on a water charge any part of which is for a period beginning prior to the imposition of the sanitary sewer service charge and ending thereafter, the sanitary sewer service charge shall be prorated, on a monthly basis, on so much of such water charge as shall have accrued subsequent to August 1, 1954.

(c) If at any time, or from time to time, the Commissioners shall change the established sanitary sewer service charge, the sanitary sewer service charge for any period beginning prior to any such change and ending thereafter shall be prorated on a monthly basis, in accordance with the established charges prevailing in the respective periods. (May 18, 1954, 68 Stat. 107, ch. 218, title II, § 208; Mar. 2, 1962, 76 Stat. 18, Pub. L. 87–408, § 503.)

AMENDMENT

1962—Section 503, act Mar. 2, 1962, added subsection (c).

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 43–1520c.

EFFECTIVE DATE

Section effective on the first day of the third month following enactment of act May 18, 1954, see section 219 of act May 18, 1954, set out as a note under section 43–1605.

§ 43–1608. Meters and measuring devices—Maintenance and repairs.

All meters or other measuring devices installed or required to be used under the provisions of this chapter shall be under the control of the Commissioners, who shall promulgate all regulations necessary in their judgment to effectuate the purposes of this chapter. The owner or occupant of the property upon which any such measuring device is installed shall be responsible for its maintenance and safekeeping, and all repairs thereto shall be made at the owner's cost, whether such repairs are made necessary by ordinary wear and tear or other causes. Bills for such repairs, if made by the District, shall be due and payable when rendered, and the Commissioners are authorized to provide for stopping the supply of water to any building or establishment upon the failure to pay such charge for meter repairs. (May 18, 1954, 68 Stat. 107, ch. 218, title II, § 209.)

EFFECTIVE DATE

Section effective on the first day of the third month following enactment of act May 18, 1954, see section 219 of act May 18, 1954, set out as a note under section 43–1605.

§ 43–1609. Additional charge for overdue bills—Enforcement of lien.

The Commissioners are hereby authorized, in order to encourage the prompt payment of the sanitary sewer service charge imposed by this chapter, to impose an additional charge of 10 per centum for any sanitary sewer service charge remaining unpaid for more than thirty days, to shut off the water of premises for which such charge is not paid within thirty days, and to have and enforce a continuing lien for such charge upon the land and any improvements thereon furnished such sanitary sewer service, in the same manner and to the same extent as if sections 43–1521a, 43–1521b, 43–1521c, and 43–1521d were set forth in this chapter, and such sections shall be deemed to be applicable in every particular to the sanitary sewer service charge imposed by this chapter: *Provided,* That whenever said lien is enforced by the sale of property against which it has been assessed, so much of the proceeds of such sale as represents said unpaid sanitary sewer service charges shall be credited to the D. C. Sanitary Sewage Works Fund. (May 18, 1954, 68 Stat. 107, ch. 218, title II, § 210.)

EFFECTIVE DATE

Section effective on the first day of the third month following enactment of act May 18, 1954, see section 219 of act May 18, 1954, set out as a note under section 43–1605.

§ 43–1610. Sanitary sewer service charges as to churches and institutions.

The sanitary sewer service charges applicable to such churches and institutions as may under existing law be furnished water without charge by the Commissioners shall be predicated only on the quantity of water used in excess of the amount fixed by the Commissioners in each case as to which no water charge is made. (May 18, 1954, 68 Stat. 108, ch. 218, title II, § 211.)

EFFECTIVE DATE

Section effective on the first day of the third month following enactment of act May 18, 1954, see section 219 of act May 18, 1954, set out as a note under section 43–1605.

§ 43–1611. Sanitary sewer service charges for sewer services furnished for direct use by the Government of the United States.

(a) The sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services furnished by the sanitary sewage works of the District through any connection thereto for direct use by the Government of the United States or any department, independent establishment, or agency thereof, and such charges shall be predicated on the value of water and water services received by such facilities of the Government of the United States or any department, independent establishment, or agency thereof from the District water supply system. Payment of the said sanitary sewer service charge shall be made as provided in subsection (b) of this section: *Provided,* That the aggregate amount of such sanitary sewer service charge for each fiscal year shall be determined in the manner prescribed in section 43–1606: *Provided further,* That the obligation to pay for sanitary sewer services received by the Government of the United States or any department, independent establishment, or agency thereof shall be with respect to such service furnished on and after July 1, 1954.

(b) For the purpose of effectuating the provisions of subsection (a) of this section there shall be included annually in the budget estimates of the Commissioners beginning with the estimates for the fiscal year ending June 30, 1955, the value as determined by the Commissioners of the sanitary sewer service furnished to the United States or to any department, independent establishment, or agency thereof during the most recent preceding fiscal year for which such value can be determined based on the rates for such charges prevailing during the period of such service, and there shall be appropriated annually for the

D. C. Sanitary Sewage Works Fund out of any money in the Treasury not otherwise appropriated (to be advanced on July 1 of each fiscal year beginning July 1, 1954) a sum corresponding to the said value of charges for sanitary sewer service furnished the United States. (May 18, 1954, 68 Stat. 108, ch. 218, title II, § 212.)

§ 43–1612. Loans from the United States Treasury for sanitary and combined sewer systems of the District.

The Commissioners are hereby authorized to accept loans for the District from the United States Treasury to finance the construction, expansion, relocation, replacement, or renovation of (1) the sanitary sewer system of the District or (2) the combined sewer system of the District; and the Secretary of the Treasury is authorized to advance such sums as may be appropriated for such purposes. (May 18, 1954, 68 Stat. 108, ch. 218, title II, § 213.)

§ 43–1613. Limit of loans for the sanitary and combined sewer systems.

The total principal amount of loans made in connection with the construction, expansion, relocation, replacement, or renovation of the sanitary and combined sewer systems of the District shall not exceed $32,000,000. Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in full in the Treasury of the United States to the credit of the D. C. Sanitary Sewage Works Fund. (May 18, 1954, 68 Stat. 108, ch. 218, title II, § 214; Sept. 6, 1960, 74 Stat. 811, Pub. L. 86–711, § 1.)

AMENDMENT

1960—Act Sept. 6, 1960, substituted "$32,000,000" for "$5,000,000."

§ 43–1614. Use of funds from D. C. Sanitary Sewage Works Fund for certain sewers—Allocation of cost.

Nothing herein contained shall prohibit the use of funds deposited to the credit of the D. C. Sanitary Sewage Works Fund from being used for the construction, expansion, relocation, replacement, or renovation of any sewer in the combined sewer system of the District, but the Commissioners, prior to authorizing the use of moneys from such fund for such work, shall determine the percentage of the cost to be borne by the D. C. Sanitary Sewage Works Fund and the percentage to be borne by the General Fund. (May 18, 1954, 68 Stat. 109, ch. 218, title II, § 215.)

§ 43–1615. Advancement and availability of funds from loans.

The loans authorized by this chapter shall be advanced to the Commissioners on their requisitions therefor, shall be available to the Commissioners for the construction, expansion, relocation, replacement, or renovation of all parts of the sanitary sewage works of the District, and shall be available until expended. (May 18, 1954, 68 Stat. 109, ch. 218, title II, § 216.)

§ 43–1616. Repayment of loans.

(a) Any loan advanced under this chapter shall be repaid to the Secretary of the Treasury in substantially equal annual payments, including principal and interest, within a period of thirty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to the D. C. Sanitary Sewage Works Fund: *Provided*, That the Commissioners may, in their discretion, make repayments in larger amounts at any time during the life of any such loan. Interest on such loans shall begin to accrue as of the dates the respective advancements are credited to the D. C. Sanitary Sewage Works Fund.

(b) Notwithstanding the provisions of the preceding subsection, the interest and principal payments on not to exceed $10,000,000 of the loans authorized by section 43–1613 shall be deferred whenever the Secretary of the Treasury finds that the income received from charges for sewage service attributable to sewage flowing into the District of Columbia sanitary sewage works from the Potomac interceptor (authorized by sections 43–1620 to 43–1624) is inadequate to provide for the payment of such interest or principal, or both interest and principal, and such deferred interest and principal shall be added to the sums payable to the Secretary of the Treasury in later years. (May 18, 1954, 68 Stat. 109, ch. 218, title II, § 217; Sept. 6, 1960, 74 Stat. 812, Pub. L. 86–711, § 1).

AMENDMENT

1960—Act Sept. 6, 1960, designated existing provisions as subsec. (a), and added subsec. (b).

§ 43–1617. Interest rates on loans.

Loans advanced pursuant to this chapter during any six-month period (beginning with the six-month period ending December 31, 1954) shall be at a rate of interest determined by the Secretary of the Treasury as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowings at a maturity approximately equal to one-half of the period of time the loan is outstanding. (May 18, 1954, 68 Stat. 109, ch. 218, title II, § 218.)

§ 43–1618. Commissioners' authority to make regulations.

The Commissioners are authorized to make rules and regulations to carry out the provisions of this chapter. (May 18, 1954, 68 Stat. 120, ch. 218, title XVII, § 1701.)

CODIFICATION

In addition to the sections contained in this chapter the authority of the Commissioners to make regulations extends to all of the act of May 18, 1954, known as the District of Columbia Public Works Act of 1954, which has been classified to the following sections of the District of Columbia Code: §§ 7–132, 7–133, 7–901, 25–138, 40–102, 40–103, 43–1504, 43–1520c, 43–1521a, 43–1521b, 43–1521c, 43–1521d, 43–1540, 43–1541, 43–1601 to 43–1618, 47–313, 47–314, 47–501a, 47–1203, 47–1206, 47–1208 to 47–1211, 47–1567b, 47–1701, 47–2331, 47–2501a, 47–2501b, 47–2601, 47–2602, 47–2604, 47–2605, 47–2701, 47–2702, 47–2705, 47–2802.

DULLES INTERNATIONAL AIRPORT SANITARY SEWER

§ 43–1620. Commissioners authorized to develop plan for interceptor and sewer line.

The Commissioners of the District of Columbia (or their designated agents), hereinafter called the Commissioners, are hereby authorized to develop a

plan for a sanitary interceptor and trunk sewer line to extend from Dulles International Airport to the District of Columbia system, hereinafter called the Potomac interceptor, which shall be of sufficient capacity to provide service for such airport and for the expected community growth and development in the adjacent areas in the States of Maryland and Virginia. Such plan shall be developed in consultation with the National Capital Planning Commission and the National Capital Regional Planning Council. (June 12, 1960, 74 Stat. 210, Pub. L. 86–515, § 1.)

§ 43–1621. Potomac interceptor—Acquisition of rights-of-way—Plans and specifications—Operation and maintenance of regional sanitary sewer system—Charges for use of interceptor—Deposit of funds.

(a) Upon completion of the plan authorized by section 43–1620, the Commissioners are authorized to provide for acquisition of rights-of-way, development of the detailed plans and specifications, and construction of the Potomac interceptor. When such interceptor is completed, it shall be operated and maintained by the Commissioners as a part of a regional sanitary sewer system in cooperation with the proper authorities of the State and local jurisdictions concerned, under such regulations as may be prescribed by the Commissioners.

(b) The Commissioners are authorized to establish, by agreements with the appropriate agencies of the United States and with the proper authorities of the States and local jurisdictions concerned, charges for the use of the Potomac interceptor, which shall be based upon the costs of operation, maintenance, and amortization of the cost of all planning and construction (including acquisition of rights-of-way) of such interceptor, but which shall exclude such amount as may be appropriated pursuant to section 43–1622. The Commissioners shall credit all receipts from such charges for the use of the Potomac interceptor to a special fund which is hereby established and which shall be known as the Metropolitan Area Sanitary Sewage Works Fund of the District of Columbia. Such special fund shall be available in such amounts as may be appropriated from time to time for expenses necessary to plan, construct, maintain, and operate the Potomac interceptor.

(c) The Commissioners shall also charge all users of the Potomac interceptor, including any agency of the United States for carrying, treating, and disposing of sewage in the sewerage system of and within the District of Columbia consistently with the provisions of section 1–817c and section 1–817, and the receipts derived from said charges shall be deposited to the credit of the D.C. Sanitary Sewage Works Fund (created by section 43–1602). (June 12, 1960, 74 Stat. 211, Pub. L. 86–515, § 2.)

§ 43–1622. Authorization of appropriations.

For the purposes of carrying out the provisions of sections 43–1620 to 43–1624, there is authorized to be appropriated, without fiscal year limitation, to the Metropolitan Area Sanitary Sewage Works Fund the sum of $3,000,000, as the Federal contribution toward the cost of planning, acquiring rights-of-way for, and constructing the Potomac interceptor. (June 12, 1960, 74 Stat. 210, Pub. L. 86–515, § 3.)

§ 43–1623. Advancement of funds—Crediting and repayment of loans.

The Secretary of the Treasury is authorized and directed to advance to the Commissioners, from time to time, and the Commissioners are authorized to accept as loans, such additional funds, not exceeding a total of $25,000,000, as may be appropriated to carry out the purposes of sections 43–1620 to 43–1624. Any loan advanced under this section shall be credited to the Metropolitan Area Sanitary Sewage Works Fund, and shall be repaid to the Secretary of the Treasury, from the receipts credited to said fund, in substantially equal annual payments including principal and interest, within a period of forty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to this fund: *Provided,* That interest and principal payments shall be deferred whenever the Secretary of the Treasury finds that the income received from charges for sewage services is inadequate to cover these and other expenses properly chargeable to these receipts, and such deferred interest and principal shall be added to the sums payable to the Secretary of the Treasury in later years. The interest rates on such loans shall be determined in accordance with the provisions of section 43–1617. (June 12, 1960, 74 Stat. 211, Pub. L. 86–515, § 4.)

§ 43–1624. Acquisition of land in Maryland or Virginia for Potomac interceptor—Title to and jurisdiction over land—Condemnation proceedings.

(a) The Commissioners are authorized to acquire by purchase, condemnation, donation, or otherwise, any land or any interest in land located in Maryland or Virginia needed for construction and operation of the Potomac interceptor. Title to any such land or interst in land shall be taken in the name of the United States but shall be under the jurisdiction and control of the Commissioners. For the purpose of acquiring any such land or any interest in land, the Commissioners shall be deemed to be officers of the Government within the meaning and for the purposes of section 257 of title 40, U.S. Code. The provisions of sections 257a—257e and 258f of title 40, U.S. Code, shall be applicable to any condemnation proceedings instituted pursuant to authority of sections 43–1620 to 43–1624.

(b) When any land under the jurisdiction of any department or agency of the United States may be needed for the construction or operation of the Potomac interceptor, the appropriate officer of such department or agency is authorized, upon request of the Commissioners, to transfer to the Commissioners jurisdiction over so much of such land, or of such interests therein, as the Commissioners shall request. (June 12, 1960, 74 Stat. 211, Pub. L. 86–515, § 5.)

TITLE 44.—RAILROADS AND OTHER CARRIERS

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Chapter 1.—RAILROADS

Sec.
44–101. Sale of unclaimed freight.
44–102. Disposition of property under court order.
44–103. Disposition of proceeds of sale.
44–104. Philadelphia, Baltimore and Washington Railroad Company—Abandonment of substation authorized—Repeal of certain laws.
44–105. Waiting room on platform authorized.
44–106. Reversion of property to District of Columbia—Adequate walkways provided.
44–107. Right to alter, amend, or repeal reserved.

§ 44–101. Sale of unclaimed freight.

Whenever any freight, baggage, or other property transported by a common carrier to, or deposited with a common carrier at, any point in the District of Columbia, shall remain unclaimed by the owner or consignee, or the charges thereon shall remain unpaid for the space of six months after arrival at the point to which the same shall have been directed or transported, or after deposit as aforesaid, and the owner or person to whom the same is consigned, or by whom the same shall have been deposited, shall, after notice of such arrival, or after notice to take away such property so deposited, neglect or refuse to receive the same and pay the charges thereon within such period of six months, then it shall be lawful for such carrier to sell such freight, baggage, or other property at public auction, after giving three weeks' notice of the time and place of sale, once a week for three successive weeks, in a newspaper published in the District of Columbia. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 642.)

§ 44–102. Disposition of property under court order.

Upon the application of such carrier, verified by affidavit, to the United States District Court for the District of Columbia, setting forth that the place of residence of the owner or consignee of any such freight, baggage, or other property is unknown, or that such freight, baggage, or other property is of such perishable nature, or so damaged, or showing any other cause that shall render it impracticable to give the notice or delay the sale for the period provided in section 44–101, then it shall be lawful for such court to make an order authorizing the sale of such freight, baggage, or other property upon such terms as to notice as the nature of the case may admit of and to such court shall seem meet: *Provided,* That in case of perishable property the affidavit and proceedings required and authorized by this section may be had before the District of Columbia Court of General Sessions in cases where the value of the property involved does not exceed one thousand dollars. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 643; June 30, 1902, 32 Stat. 534, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 3, 1921, 41 Stat. 1310, ch. 125, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CODIFICATION

Words "holding a special term", which followed "United States District Court for the District of Columbia" near beginning of section, have been omitted as obsolete. They had meaning only when the District Court, formerly known as the Supreme Court of the District of Columbia (see change of name note below) under statute had "special terms" designated as "circuit court", "district court", "equity court", etc. These have been abolished. See revision note under § 11–502.

AMENDMENTS

1921—Act Mar. 3, 1921, increased the value of property from "three hundred dollars" to "one thousand dollars."

1902—Act June 30, 1902, added at the end of the section the words "in cases where the value of the property involved does not exceed three hundred dollars."

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

Act July 8, 1963, § 1, changed the name of the municipal court for the District of Columbia to the "District of Columbia Court of General Sessions". Provisions identical with those of such act July 8, 1963, § 1, were contained in act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1. Prior thereto, act Feb. 17, 1909, had changed the name of justice of peace court to municipal court of the District of Columbia.

§ 44–103. Disposition of proceeds of sale.

The residue of moneys arising from any such sale, under either section 44–101 or 44–102, after deducting the amount of charges, including charges for transportation, the cost of handling and storage, demurrage, and the costs and expenses of proceedings to authorize the sale, and of advertising and sale, shall be paid to the owner of such freight, baggage, or other property on demand. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 644.)

§ 44–104. Philadelphia, Baltimore and Washington Railroad Company—Abandonment of substation authorized—Repeal of certain laws.

Upon the completion by it of the substitute facilities authorized by section 44–105 hereof, The Philadelphia, Baltimore and Washington Railroad Company is authorized, without any further or other authority, to abandon and remove the Seventh Street substation built and maintained by it pursuant to the requirements of Act of February 3, 1909 (35 Stat. 593, ch. 63), and to abandon the ticket

agency and baggage accommodations maintained by it pursuant to the requirements of said Act. (July 25, 1935, 49 Stat. 497, ch. 415, § 1.)

§ 44–105. Waiting room on platform authorized.

In lieu of the said substation and facilities maintained at the intersection of Seventh Street and C Street Southwest, in the City of Washington, The Philadelphia, Baltimore and Washington Railroad Company is authorized to construct and maintain on the train platform an enclosed waiting room for passengers, with convenient means of ingress and egress leading from and to the street level below. (July 25, 1935, 49 Stat. 498, ch. 415, § 2.)

§ 44–106. Reversion of property to District of Columbia—Adequate walkways provided.

The area in square south of 463 on the map of the City of Washington heretofore used for station purposes shall revert to the District of Columbia upon the completion of these improvements: *Provided,* That the said Philadelphia, Baltimore and Washington Railroad Company shall construct and maintain thereon, subject to the approval of the Commissioners of the District of Columbia, adequate walkways to the adjacent streets. (July 25, 1935, 49 Stat. 498, ch. 415, § 3.)

§ 44–107. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal sections 44–104 to 44–106. (July 25, 1935, 49 Stat. 498, ch. 415, § 4.)

Chapter 2.—STREET RAILWAYS AND BUS LINES

Sec.

44–201. Competing lines—Certificates of convenience and necessity.
44–202. Street railways to furnish sufficient cars—Power, equipment, appliances, and service—Rules and regulations—Penalties.
44–203. Prosecutions to be by information.
44–204. Fenders required on streetcars.
44–205. Glass vestibules to be provided for motormen.
44–206. Construction of duct lines authorized.
44–207. Transfers to be issued only to passenger entitled thereto.
44–208. Reciprocal transfer and trackage agreements.
44–209. Type of rails to be used.
44–210. Underground lines prohibited.
44–211. Removal of disused tracks.
44–212. Free transfers.
44–213. Free transportation of policemen and firemen.
44–214. Reduced fares for school children.
44–214a. Fares for schoolchildren not over 18 years of age—Formula for adjusting and payment of fare subsidy.
44–215. Annual reports to Congress.

§ 44–201. Competing lines—Certificates of convenience and necessity.

No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established without the prior issuance of a certificate by the Public Service Commission of the District of Columbia to the effect that the competitive line is necessary for the convenience of the public. (Jan. 14, 1933, 47 Stat. 760, ch. 10, § 4; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

CHANGE OF NAME

Section 21 of act, Aug. 30, 1964, Pub. L. 88–503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See section 2–2418.

CROSS REFERENCES

Merger of street railroads, see § 43–501 et seq.
Powers of Public Service Commission, see § 43–202.

PAVING REGULATIONS—REPEAL

All provisions of law making it incumbent upon any street-railway company to bear the expense of policemen at street railway crossings and intersections, the laying of new pavement, the making of permanent improvements, renewals, or repairs to the pavement of streets and public bridges, and the permanent improvements, renewals, or repairs to public bridges over which the streetcar lines operate, are hereby repealed, such repeal to be effective on the date the unification herein authorized becomes operative: *Provided,* That the Capital Transit Company herein provided for shall bear the entire cost of paving, repairs, or replacements incident to track repairs, replacements, or changes made at a time when the street or bridge is not being paved, and shall bear one-half the cost of other paving, repaving, or maintenance of paving between its track and for two feet outside the outer rails, and shall bear the excess cost of construction and maintenance of public bridges: *Provided further,* That nothing herein contained shall relieve said Capital Transit Company from liability for street paving as owner of real estate apart from right-of-way occupied by its tracks as provided by section 8 of the Act of Congress entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1917, and for other purposes," approved September 1, 1916, as amended to date. (Jan. 14, 1933, 47 Stat. 759, ch. 10, § 3.)

NOTES TO DECISIONS

Application

Provision of this section prohibiting establishment of bus line, competitive with named transit company, over a given route on a fixed schedule, unless Public Utilities Commission has issued certificate to competing carrier that its line is necessary for convenience of public, gives transit company a status which is legally protectible. *Capital Transit Co.* v. *Safeway Trails, Inc.* (1953, 201 F. 2d 708, 92 U. S. App. D. C. 20).

Provision that no competitive street railway or bus line for transportation of passengers of character which runs over a given route on a fixed schedule shall be established without prior issuance of certificate by Public Utilities Commission of District of Columbia to effect that competitive line is necessary for convenience of public covers all kinds of operations of a competitive bus line, regardless of whether they are intrastate or interstate, and such provision is not limited to interstate operations. *Oriole Motor Coach Co.* v. *Public Utilities Commission* (D.C.D.C. 1953, 111 F. Supp. 621).

Findings

There was no such absence of substantial evidence in support of Public Utilities Commission's finding that bus service extension was necessary for convenience of public as would overcome conclusiveness thereof. *Washington, Marlboro & Annapolis Motor Lines, Inc.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1953, 114 F. Supp. 321).

Injunction

The Public Utilities Commission of the District of Columbia is not entitled to an injunction restraining a utility from retiring bonds and from paying a proposed dividend, pending Commission's investigation of utility's financial structure, even if neither stockholders nor bondholders nor utility would be significantly injured by delay, unless there appears a legal basis for issuance of injunction. *Public Utilities Commissioner of District of Columbia* v. *Capital Transit Co. et al.* (1954, 214 F. 2d 242, 94 U. S. App. D. C. 140).

Notice of hearing

Where, on appeal from order extending bus lines, court found it reasonably possible that a competitor's

interests might be adversely affected thereby, but, being unable to determine if such were the fact, remanded the case to the Commission with direction that competitor be accorded a fair hearing after due notice, any defect in original proceeding caused by lack of notice to competitor was corrected by remand and subsequent action of competitor in proceeding. *Washington, Marlboro & Annapolis Motor Lines, Inc.* v. *Public Utilities Commission of District of Columbia et al.* (D.C.D.C. 1953, 114 F. Supp. 321).

§ 44–202. Street railways to furnish sufficient cars—Power, equipment, appliances, and service—Rules and regulations—Penalties.

Every street railroad company or corporation owning, controlling, leasing or operating one or more street railroads within the District of Columbia shall on each and all of its railroads supply and operate a sufficient number of cars, clean, sanitary, in good repair, with proper and safe power, equipment, appliances and service, comfortable and convenient, and so operate the same as to give expeditious passage, not to exceed fifteen miles per hour within the city limits or twenty miles per hour in the suburbs, to all persons desirous of the use of the said cars, without crowding said cars. The Public Service Commission is hereby given power to require and compel obedience to all of the provisions of this section, and to make, alter, amend and enforce all needful rules and regulations to secure said obedience; and said commission is given power to make all such orders and regulations necessary to the exercise of the powers herein granted to it as may be reasonable and proper; and such railroad companies or corporations, their officers and employees, are hereby required to obey all the provisions of this section, and such regulations and orders as may be made by said commission. Any such company or corporation, or its officers or employees, violating any provision of this section, or any of the said orders or regulations made by said commission, or permitting such violation, shall be punished by a fine of not more than one thousand dollars. And each day of failure or neglect on the part of such company or corporation, its officers or employees, to obey each and all of the provisions and requirements of this section, or the orders and regulations of the commission made thereunder, shall be regarded as a separate offense. (May 23, 1908, 35 Stat. 250, ch. 190, § 16; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

Codification

As originally enacted, the words "not to exceed fifteen miles per hour within the city limits or twenty miles per hour in the suburbs" after the words "expeditious passage" were included. These speed limits have been superseded by various traffic regulatory laws. See §§ 40–602 (j), 40–603, 40–605.

Amendment

1913—Act Mar. 4, 1913, transferred powers over street railways from Interstate Commerce Commission to Public Utilities Commission.

Change of Name

Section 21 of act, Aug. 30, 1964, Pub. L. 88–503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See section 2–2418.

Cross References

Cars required to be brought to full stop at certain intersections, see § 4–112.

Merger of street-railway corporations operating in District of Columbia, see §§ 43–501 to 43–503.

Other provisions for care, maintenance, and repair of street cars, see § 43–208.

Prosecutions hereunder, see § 44–203.

NOTES TO DECISIONS

Construction

This act does not repeal the Act of Congress March 3, 1905, 33 Stat. 1001 (§ 44–205), but on the contrary both are capable of concurrent enforcement. *Washington R. & Elec. Co.* v. *District of Columbia* (1926, 10 F. 2d 999, 56 App. D. C. 134).

Prosecutions

Prosecutions under this section should be conducted by the corporation counsel in the name of the District of Columbia. *United States* v. *Capital Trac. Co.* (1912, 38 App. D. C. 469).

§ 44–203. Prosecutions to be by information.

Prosecutions for violations of any of the provisions of sections 44–202, 44–206, and 44–207 shall be on information of the Public Service Commission filed in the District of Columbia Court of General Sessions by or on behalf of the commission. (May 23, 1908, 35 Stat. 250, ch. 190, § 17; Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

References in Text

In the orginal, "provisions of sections 44–202, 44–206, and 44–207" referred to in the text read "provisions of this act," sections 4, 15, 16 and 17 of which are classified to sections 44–206, 44–207, 44–202, 44–203, respectively.

Amendment

1913—Act Mar. 4, 1913, transferred powers over street railways from Interstate Commerce Commission to Public Utilities Commission.

Change of Name

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

Section 21 of act, Aug. 30, 1964, Pub. L. 88–503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See section 2–2418.

Cross Reference

Criminal offenses generally, see § 43–901 et seq.

NOTES TO DECISIONS

In general

This act does not repeal the Act of Congress March 3, 1905, 33 Stat. 1001 (§ 44–205), but on the contrary both are capable of concurrent enforcement. *Washington R. & Elec. Co.* v. *District of Columbia* (1926, 10 F. 2d 999, 56 App. D.C. 134).

Prosecutions under section 44–202 should be conducted by the corporation counsel in the name of the District of Columbia. *United States* v. *Capital Trac. Co.* (1912, 38 App. D.C. 469).

§ 44–204. Fenders required on streetcars.

The Commissioners of the District of Columbia are hereby authorized and empowered to make and to enforce all reasonable regulations in respect to requiring street cars operated by other means than horse power in the District of Columbia to be provided with proper fenders for the protection of the lives and limbs of all persons within the District of Columbia. Such power and authority shall extend to the adoption by the said commissioners of any

fender or fenders deemed by them to be superior to the fenders now in use as the fender or fenders which shall be used on cars operated within said District: *Provided,* That nothing contained in this section shall operate to relieve any street railway company from liability for accidents on its lines. (Aug. 7, 1894, 28 Stat. 250, ch. 232.)

CROSS REFERENCES

Other provisions for care, maintenance, and repair of street cars, see § 43–208.

Rules and regulations generally, see § 43–202.

§ 44–205. Glass vestibules to be provided for motormen.

Every person or corporation operating street cars in the District of Columbia shall provide each of the same with a glass vestibule, surrounding, as nearly as possible, the place where the motorman, operating said car stands, so that said motorman shall be protected from inclement weather. Every person or corporation who or which shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred nor more than five hundred dollars for each and every day any street car is operated not provided with the vestibule required by this section: *Provided, however,* That the requirements of this section shall not apply to cars operated from the 1st day of April to the 1st day of November of each and every year. (Mar. 3, 1905, 33 Stat. 1001, ch. 1434.)

CROSS REFERENCE

Other provisions for care, maintenance, and repair of street cars, see § 43–208.

NOTES TO DECISIONS

Constitutionality

This act is not void for indefiniteness. *Washington R. & Elec. Co.* v. *District of Columbia* (1926, 10 F. 2d 999, 56 App. D. C. 134).

The act is valid and was not impliedly repealed by act May 23, 1908, § 16 (§ 44–202) or act of March 4, 1913, § 8, par. 96 (§§ 43–207, 43–208). *Id.*

Open vestibule

Vestibule open on each side of platform did not comply with this act. *Washington R. & Elec. Co.* v. *District of Columbia* (1926, 10 F. 2d 999, 56 App. D. C. 134).

§ 44–206. Construction of duct lines authorized.

The Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Railway Company, and the Capital Traction Company are hereby permitted to lay duct lines on such streets as may be necessary for the proper operation of their lines, the location of such duct lines to be approved by the Commissioners of the District of Columbia, and the cost thereof shall be borne and paid solely by said street railway companies, and they shall be solely liable for all damages to persons and property occasioned by any construction or work authorized by this section. (May 23, 1908, 35 Stat. 247. ch. 190, § 4.)

CROSS REFERENCES

Easement to Washington Railway and Electric Company over Michigan Avenue, see § 7–131.

Merger of street railway corporations operating in District of Columbia, see §§ 43–501 to 43–503.

Prosecutions hereunder, see § 44–203.

§ 44–207. Transfers to be issued only to passenger entitled thereto.

No transfer ticket or written or printed instrument giving or purporting to give the right of transfer to any person or persons from a public conveyance operated upon one line or route of a street railroad or from one car to another car upon the line of any street railroad, shall be issued, sold, or given except to a passenger lawfully entitled thereto. Any person who shall issue, sell, or give away such a transfer ticket or instrument as aforesaid to a person or persons not lawfully entitled thereto, and any person or persons not lawfully entitled thereto who shall receive and use or offer for passage any such transfer ticket or instrument to another with intent to have such transfer ticket used or offered for passage shall be punished by a fine not exceeding twenty-five dollars. (May 23, 1908, 35 Stat. 250, ch. 190, § 15.)

CROSS REFERENCES

Prosecutions hereunder, see § 44–203.

Rates and rate making, see § 43–401.

NOTES TO DECISIONS

Prosecutions

Prosecutions for violating act should be conducted by the corporation counsel in the name of the District of Columbia. *United States* v. *Capital Trac. Co.* (1912, 38 App. D.C. 469).

§ 44–208. Reciprocal transfer and trackage agreements.

Every street railway in the District of Columbia whose lines connect, or whose lines may, after August 2, 1894, connect, with the lines of any other street railway company, is hereby required to make reciprocal transfer arrangements with such street railway companies, and to furnish such facilities therefor as the public convenience may require, and to enter into reciprocal trackage arrangements with such connecting roads. The schedules and compensation shall be mutually agreed upon between the said railway companies; and in case of failure to reach such mutual agreement, the matter in dispute shall be determined by the United States District Court for the District of Columbia, upon petition filed by either party. (Aug. 2, 1894, 28 Stat. 218, ch. 189, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

CROSS REFERENCE

Joint use of utility facilities, see § 43–302.

§ 44–209. Type of rails to be used.

No other rail than a flat grooved rail made level with the surface of the streets upon each side of the tracks or roadbeds, so that no obstruction shall be presented to vehicles passing over said tracks, shall be laid by any street railway company in the streets of Washington: *Provided,* That the foregoing requirements as to rails and roadbed shall not apply to street

railroads outside the City of Washington. (Mar. 2, 1889, 25 Stat. 797, ch. 370; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

AMENDMENT

Act 1895 abolished provisions as to City of Georgetown, and its street regulations were given to Washington.

CROSS REFERENCE

Jurisdiction and control over public ways, see § 7–102.

§ 44–210. Underground lines prohibited.

It shall be unlawful for any street railway company operating its system or parts of its system over any portion of the underground electric lines owned and operated by another street railway company in the City of Washington to continue such operation, or to enter into reciprocal trackage relations with any other company, unless its motive power for the propulsion of its cars shall be the same as that of the company whose tracks are used or to be used. For every violation of sections 44–210 to 44–212 the company violating it shall be subject to a fine of ten dollars for every car operated in violation of the provisions of sections 44–210 to 44–212, said fine to be collected and applied in the same manner as is provided by section 44–211. (Mar. 3, 1901, 31 Stat. 1302, ch. 854, § 711.)

CODIFICATION

The phrase "as provided for under existing law" following the words "reciprocal trackage relations with any other company" was omitted as unnecessary.

§ 44–211. Removal of disused tracks.

Whenever the track or tracks, or any part thereof, of any street railway company in the District of Columbia shall not have been regularly operated for railway purposes upon a schedule as required by its charter for a period of three months, the Commissioners of said District, in their discretion, may thereupon notify such company to remove said unused tracks and to place the street in good condition; and if such company shall neglect or refuse to remove said tracks and place the street in good condition within sixty days after such notice, the said company shall be deemed guilty of a misdemeanor and shall be liable to a fine of ten dollars for each and every day during which said tracks are permitted to remain upon the street or streets, or said roadway shall remain out of repair, which fine shall be recovered in the District of Columbia Court of General Sessions, in the name of said District, as other fines and penalties are recovered in said court. (Mar. 3, 1901, 31 Stat. 1302, ch. 854; § 710; June 30, 1902, 32 Stat. 534, ch. 1329; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

AMENDMENT

1902—Act June 30, 1902, substituted "as required by its charter" for "approved by the commissioners."

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

CROSS REFERENCES

Fine for violation of provisions of this section, see § 44–210.

Jurisdiction and control over public ways, see § 7–102.

NOTES TO DECISIONS

Abandoned structures

Abandoned structures in streets or highways are, when ordered removed by competent authority, illegally in such streets or highways. *Capital Transit Co.* v. *Hazen* (1938, 93 F. 2d 250, 68 App. D. C. 91).

§ 44–212. Free transfers.

All street railway companies within the District of Columbia on January 1, 1902, operating their systems, or parts of their systems, in the city of Washington by use of the tracks of one or more of such companies, under a reciprocal trackage agreement, which shall be compelled to discontinue the use of the tracks of another company, shall issue free transfers to their patrons from one system to the other at such junctions of their respective lines as may be provided for by the Commissioners of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1302, ch. 854, § 712.)

CROSS REFERENCES

Fine for violation of provisions of this section, see § 44–210.

Power of Public Service Commission over rates, see § 43–401.

§ 44–213. Free transportation of policemen and firemen.

On and after September 1, 1916 the several street railway companies in the District of Columbia are authorized and required to transport free of charge all members of the Metropolitan police, crossing police, park police, and fire department of the District of Columbia when in uniform and in the performance of their duties. (Sept. 1, 1916, 39 Stat. 683, ch. 433.)

SIMILAR PROVISIONS

Similar provisions were contained in the District of Columbia Appropriation Act, 1916, act Mar. 3, 1915, 38 Stat. 900, ch. 80.

FURNISHING TRANSPORTATION FOR PERSONS ON OFFICIAL BUSINESS

Provision which authorized the Commissioners to furish necessary transportation for persons on official business by purchasing street car and bus fare but did not include the appropriation made for the fire and police departments was contained in the District of Columbia Appropriation Act, 1944, act July 1, 1943, 57 Stat. 318, ch. 184, § 1. Similar provisions were contained in the following prior appropriation acts:

1943—June 27, 1942, 56 Stat. 429, ch. 452, § 1.
1942—July 1, 1941, 55 Stat. 505, ch. 271, § 1.
1941—June 12, 1940, 54 Stat. 312, ch. 333, § 1.
1940—July 15, 1939, 53 Stat. 1010, ch. 281 § 1.
1939—Apr. 4, 1938, 52 Stat. 163, ch. 62, § 1.
1938—June 29, 1937, 50 Stat. 364, ch. 403, § 1.
1937—June 23, 1936, 49 Stat. 1860, ch. 726, § 1.
1936—June 14, 1935, 49 Stat. 346, ch. 241, § 1.

CROSS REFERENCE

Rates and rate making, see § 43–401.

§ 44–214. Reduced fares for school children.

CODIFICATION

Section, act Feb. 25, 1931, 46 Stat. 1419, ch. 302, became inoperative upon acceptance of the agreement between the Capital Traction Company and the Washington Railway and Electric Company for unification under act Jan. 14, 1933, 47 Stat. 759, ch. 10.

Act Feb. 25, 1931, and section 1, par. 19 of act Jan. 14, 1933, providing for reduced fares for children under 18 years of age, were also superseded by act Aug. 9, 1955, 69 Stat. 616, ch. 680, § 1, which is classified to section 44–214a.

CROSS REFERENCE

Rates and rate making, see § 43–401.

§ 44–214a. Fares for schoolchildren not over 18 years of age—Formula for adjusting and payment of fare subsidy.

Notwithstanding provisions of the joint resolution entitled "Joint resolution to authorize the merger of street-railway corporations operating in the District of Columbia, and for other purposes", approved January 14, 1933, and the provisions of the unification agreement incorporated therein, and notwithstanding the provisions of the Act entitled "An Act or provide for the transportation of schoolchildren in the District of Columbia at a reduced fare", approved February 25, 1931, the Public Service Commission of the District of Columbia shall fix the rate of fare for transportation by street railway and bus of schoolchildren going to and from public, parochial, or like schools in the District of Columbia at not more than one-half the cash fare established from time to time by the Public Service Commission for regular route transportation within the District of Columbia, and shall establish rules and regulations governing the use thereof. No fares for schoolchildren shall be available to persons over eighteen years of age.

If, after giving effect to any and all motor vehicle fuel tax and real estate tax exemptions, the net operating income from mass transportation operations in the District of Columbia of any common carrier required to furnish transportation to schoolchildren at a reduced fare under this section for any twelve-month period ending August 31 is less than the rate of return established by the regulatory commission having jurisdiction in such carrier's last rate case, net after all taxes properly chargeable to transportation operations, including but not limited to income taxes, on its gross operating revenues in the District of Columbia, exclusive of any school fare subsidy, then the Washington Metropolitan Area Transit Commission shall, as soon as practicable after such August 31, certify to the Commissioners of the District of Columbia or their designated agent with respect to such twelve-month period: (1) an amount which is the difference between the total of all reduced fares paid to each such carrier by schoolchildren in accordance with this section and the amount which would have been paid to each such carrier if such fares had been paid at the lowest adult fare established by the Commission for regular route transportation; and (2) an amount which is the amount by which each such carrier's net operating income from mass transportation operations in the District of Columbia is less than such rate of return established by the appropriate regulatory commission in the carrier's last rate case, after giving effect to the aforesaid tax exemptions, exclusive of any such school fare subsidy. Upon such certification, the Board of Commissioners of the District of Columbia shall pay to each such carrier an amount equal to the amount certified pursuant to clause (1) thereof; except that in no event shall such amount exceed the amount certified pursuant to clause (2) hereof. (Aug. 9, 1955, 69 Stat. 616, ch. 680, § 1, June 28, 1962, 76 Stat. 113, Pub. L. 87–507, § 1(2); Aug. 30, 1964, 78 Stat. 634, Pub L. 88–503, § 21.)

REFERENCES IN TEXT

Act Jan. 14, 1933, referred to in text, was act Jan. 14, 1933, 47 Stat. 759, ch. 10, and was superseded by this section.

Act Feb. 25, 1931, referred to in text, was act Feb. 25, 1931, 46 Stat. 1419, ch. 302, and was superseded by this section.

AMENDMENT

1962—Act June 28, 1962, amended act Aug. 9, 1955, by adding a new section thereto designated as section 2. This new section is set out as the second paragraph to this section.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 2, act June 28, 1962, provided as follows: "The amendment made by the first section of this Act [Act June 28, 1962, set out as par. 2 of this section] shall be applicable with respect to the twelve-month period ending on August 31 next following the date of enactment of this Act [June 28, 1962], and to each twelve-month period thereafter."

CHANGE OF NAME

Section 21 of act, Aug. 30, 1964, Pub. L. 88–503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See section 2–2418.

NOTES TO DECISIONS

City's obligation to pay subsidy

Under statute providing that if transit company in any year earns less, on District of Columbia operations, than the return fixed by Public Utilities Commission in company's last rate case, company shall be entitled to receive an amount equal to such difference, but no more than an amount equal to 10 cents for each school child who rode the company's buses at reduced fares, District is under no obligation to pay anything unless and until Commission certifies that company has earned less than the allowed return on its local operations. *D.C. Transit System* v. *Washington Metro. Area Trans. Com'n* (1965, 350 F. 2d 753, 121 U.S. App. D.C. 375).

Under statute entitling transit company to subsidy for transporting school children at half fare only if company's earnings on its operations within District of Columbia fell below return allowed by Public Utlities Commission on systemwide operations, Commission properly refused to consider possible subsidy payments in determining company's available revenues. *Id.*

§ 44–215. Annual reports to Congress.

Every street railroad corporation in the District of Columbia, and every such corporation which shall be organized after June 10, 1896, shall, on or before the first day of February in each year, make a report to each the Senate and the House of Representatives, which report shall be sworn to and signed by the president and treasurer of such corporation, and shall cover the period of one year ending the thirty-first day of December previous to the date of making the report. Such report shall state the amount of capital stock, with a list of the stockholders and the amount of stock held by each; the amount of capital stock paid in; the total amount now of funded debt; the amount of floating debt; the average rate per annum of interest on funded debt; amount of dividends declared; cost of roadbed and superstructure, including iron; cost of land, buildings, and fixtures, including land damages; cost of cars, horses, harness, and motors and other

machinery; total cost of road and equipment; length of road in miles; length of double track, including sidings; weight of rail, by yard; the number of cars and of horses; the number of motors; the total number of passengers carried in cars; the average time consumed by passenger cars in passing over the road; repairs of roadbed and railway, including iron, and repairs of buildings and fixtures; total cost of maintaining road and real estate; cost of general superintendence; salaries of officers, clerks, agents, and office expenses; wages paid conductors, drivers, engineers, and motor men; water and other taxes; damages to persons and property, including medical attendance; rents, including use of other roads; total expense of operating road, and repairs; receipts from passengers; receipts from all other sources. specifying what, in detail; total receipts from all sources during the year; payments for maintenance and repairs; payments for interest; payments for dividends on stock, amount and rate per centum; total payments during the year; the number of persons injured in life and limb; the cause of the injury, and whether passengers, employees, or other persons. (June 10, 1896, 29 Stat. 320, ch. 395, § 10.)

CROSS REFERENCE

Records and reports of utilities generally, see § 43–318.

NOTES TO DECISIONS

Reimbursement of deficits

Reimbursement of railway company for deficits incurred in extending bus lines were properly included in gross receipts for tax purposes. *Potomac Elec. Power Co.* v. *Rudolph* (1929, 29 F. 2d 634, 58 App. D. C. 261, certiorari denied 49 S. Ct. 185, 278 U. S. 656, 73 L. Ed. 565).

Chapter 3.—PASSENGER MOTOR VEHICLES FOR HIRE

Sec.

44–301. Passenger motor vehicles for hire to carry insurance—Exceptions—Liability of insurance company absolute.
44–302. Insurance companies must be authorized to do business in District—Bonds to be secured—Insurance companies and corporate sureties must be approved by Superintendent—Reserves—Superintendent may make rules and regulations—Superintendent may withdraw certificate of approval after hearing—Conditions for cancellation of insurance policies and bonds.
44–303. Unlawful to operate vehicle without approved bond or policy.
44–304. Commission authorized to make rules and regulations.
44–305. Alternate provisions for insurance coverage—Blanket policy for more than one vehicle—Sinking fund in lieu of insurance—Conditions for creation and maintenance of sinking fund—Proof of financial responsibility—Admission of liability by owner for tortious acts of drivers of vehicles—Sinking fund exempt from attachment or levy for other obligations of depositor.
44–306. "Owner" defined.
44–307. Penalties.

§ 44–301. Passenger motor vehicles for hire to carry insurance—Exceptions—Liability of insurance company absolute.

The Public Service Commission of the District of Columbia (hereafter referred to in this chapter as the "Commission") is hereby directed to require any and all corporations, companies, associations, joint-stock companies or associations, partnerships, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, operating, controlling, managing, or renting any passenger motor vehicles for hire in the District of Columbia, except as to operations licensed under section 47–2331 (b), and except such common carriers as have been expressly exempted from the jurisdiction of the Commission, to file with the Commission for each such motor vehicle to be operated, evidence, in such form and on such terms and conditions as the Commission may prescribe with the approval of the Superintendent of Insurance of the District of Columbia (hereafter referred to in this chapter as the "Superintendent"), that such motor vehicle is covered by a bond or liability insurance in a surety or insurance company authorized to do business in the District of Columbia, conditioned for the payment to any person of any legal obligation of, or judgment recovered against, such corporations, companies, associations, joint-stock companies or associations, partnerships, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, or renters of their cabs, for death or for injury to any person or damage to any property, or both, arising out of the ownership, maintenance, or use of such motor vehicle by any person for any purpose within the United States. Such bond or insurance may limit the liability of the surety or insurer on any one judgment to $10,000, for bodily injuries or death, and $5,000 for damage to property, and on all judgments recovered upon claims arising out of the same subject of action to $20,000 for bodily injuries or death, and $5,000 for damage to property, to be apportioned ratably among the creditors according to the amount of their respective legal obligations. The liability of an insurance company in any policy of insurance or of any indemnity company in a bond issued pursuant to this chapter shall, within the limits of coverage required by this chapter, become and be absolute for damages adjudged against the insured on account of injuries to or death of persons or damage to or destruction of property resulting from the insured's ownership, maintenance, or use of the motor vehicle or vehicles described in the said policy or bond. (June 29, 1938, 52 Stat. 1233, ch. 809, § 1; Dec. 15, 1942, 56 Stat. 1051, ch. 734; Aug. 28, 1958, 72 Stat. 952, Pub. L. 85–792, § 2; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

AMENDMENTS

1958—Act Aug. 28, 1958, amended section to permit the filing of evidence of coverage by a bond or liability insurance in such form and on such terms and conditions as the Commission with the approval of the Superintendent may prescribe, increased the limits of liability of the insurer or surety on any one judgment from $5,000 to $10,000 for bodily injuries or death, from $1,000 to $5,000 for damage to property, and on all judgments recovered upon claims arising out of the same subject of action from $10,000 to $20,000 for bodily injuries or death and from $1,000 to $5,000 for damage to property, made absolute the liability of the insurance company and deleted provisions relating to eligibility requirements of insurance companies, maintenance of reserves for certain purposes by such companies, powers of the Superintendent of Public Utilities Commission to make rules and regulations, cancellation of bonds or policies of insurance, filing of blankets bonds in lieu of bonds or policies of insurance by owners of public vehicles, creation and maintenance of a sinking fund, definition of

"owner," and penalties for violation of regulations promulgated under this section, which provisions have been incorporated in sections 44–302 to 44–307.

1942—Act Dec. 15, 1942, prohibited any insurance company or corporate surety from conducting the business of insurance under this section without a finding by the Superintendent of Insurance that such company or surety was capable of conducting such business in the public interest, required possession of a certificate of approval issued by the Superintendent, maintenance of reserves for losses, unearned premiums or other liabilities, empowered the Superintendent to make rules and regulations governing the writing of bonds and the business of insurance or bonding of risks, including the expenses of management, administration, and acquisition of business, and authorized the Superintendent after a hearing to withdraw the certificate of approval for violation of any provision of this chapter.

CHANGE OF NAME

Section 21 of act, Aug. 30, 1964, Pub. L. 88–503, changed the name of the Public Utilities Commission of the District of Columbia to "Public Service Commission of the District of Columbia." See section 2–2418.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 17 of act Aug. 28, 1958, provided that: "Section 2 of this Act [amending this section and enacting sections 44–302 to 44–307] shall take effect 60 days after its enactment [Aug. 28, 1958]."

SHORT TITLE

Section 1 of act Aug. 28, 1958, provided that: "Section 2 of this Act [classified to sections 44–301 to 44–307] may be cited as the 'District of Columbia Taxicab Insurance Act of 1958.' "

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

Section 16 of act Aug. 28, 1958, provides as follows: "Nothing in this Act shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

CROSS REFERENCES

General provisions concerning powers and duties of Public Service Commission, see § 43–202.

Rules and regulations by insurance department, see § 35–102.

NOTES TO DECISIONS

Certificate of insurance

Where insurance company over its signature on certificate of insurance filed with Public Utility Commission of the District of Columbia by owner of taxicab recited that policy and endorsement on certificate would remain in full force and effect until cancelled, insurance company could not successfully contend that it never in fact executed the endorsement. *Thompson* v. *Amalgamated Cas. Ins. Co., Inc.* (1953, 207 F. 2d 214, 92 U. S. App. D.C. 307).

Coverage

Insurer of owner of taxicab, by signing certificate of insurance filed with Public Utility Commission of the District of Columbia and embodying endorsement stating that coverage was in accordance with provision providing that one operating or running motor vehicle for hire must file with the commission a bond or liability insurance covering any judgment for injury to any person arising from operation of motor vehicle assumed liability for judgment rendered in action for wrongful death occurring in Virginia, while taxicab was being driven by one other than owner, though policy provided for coverage only within District of Columbia while taxicab was being used with permission of owner. *Thompson* v. *Amalgamated Cas. Ins. Co., Inc.* (1953, 207 F. 2d 214, 92 U.S. App. D.C. 307).

Duty of superintendent of insurance

The duty of Superintendent of Insurance is to see that form of taxicab liability policies accurately and equitably meet requirements of Public Utilities Commission. *Bennett* v. *Amalgamated Cas. Ins. Co.* (1953, 200 F. 2d 129, 91 App. D.C. 279).

Terms and conditions of insurance

Superintendent of Insurance, acting alone, has no power to prescribe the terms and conditions of public liability policies covering taxicabs, since Public Utilities Commission has duty of regulating public liability insurance under statutory provision that taxicab insurance contract shall be in such form and on such terms or conditions as the Commission may direct. *Bennett* v. *Amalgamated Cas. Ins. Co.* (1953, 200 F. 2d 129, 91 App. D.C. 279).

§ 44–302. Insurance companies must be authorized to do business in District—Bonds to be secured—Insurance companies and corporate sureties must be approved by Superintendent—Reserves—Superintendent may make rules and regulations—Superintendent may withdraw certificate of approval after hearing—Conditions for cancellation of insurance policies and bonds.

(a) Any policy of liability insurance required by this chapter shall be issued only by such insurance companies as may have been authorized to do business in the District of Columbia, and any bond or undertaking required by this chapter shall be secured by a corporate surety approved by the Superintendent.

(b) No insurance company or corporate surety shall engage in or conduct the business of insuring or bonding any risk arising out of the operation of any passenger motor vehicle for hire required to be insured or bonded under this chapter unless the Superintendent shall find that the management of such company is capable, by experience or otherwise, of conducting such business in the public interest and unless such insurance company or corporate surety shall possess a certificate of approval issued by the Superintendent for such business. Every such insurance company or corporate surety, whether or not it shall be a mutual company, shall have and shall at all times maintain reserves for losses, unearned premiums, and all other liabilities as will meet the requirements of any regulation issued by the Superintendent applicable to such company or such classifications of companies. The Superintendent is empowered to make reasonable rules and regulations governing the writing of such insurance, and the making of such bonds, and the business of insuring or bonding such risks, including the expenses of management, administration, and acquisition of business and the rates to be charged.

(c) The Superintendent is authorized and empowered, after hearing, to withdraw his certificate of approval of the business of insuring or bonding taxicab risks of any insurance company or corporate surety violating any provision of this chapter or the rules and regulations promulgated hereunder.

(d) No bond or policy of insurance required by this chapter may be canceled unless not less than twenty days prior to such cancellation or termination, notice of intention so to do has been filed in writing with the Commission, unless such cancellation is for nonpayment of premiums, in which event five days' notice as above provided shall be given. (June 29, 1938, ch. 809, § 2, as added Aug. 28, 1958, 72 Stat. 952, Pub. L. 85–792, § 2.)

EFFECTIVE DATE

Section effective sixty days after Aug. 28, 1958, see section 17 of act Aug. 28, 1958, set out as a note under section 44–301.

NOTES TO DECISIONS

Notice of cancellation

Where this section and first insurer's liability policy covering taxicab authorized cancellation only on filing of notice with public utility commission and insured, on obtaining new policy from second insurer, ceased paying premiums on first policy but first insurer had not, at time of taxicab accident, filed cancellation notice with commission, as between the two insurers, the loss should fall on the second insurer. *Amalgamated Casualty Ins. Co.* v. *Winslow* (1943, 135 F. 2d 663, 77 U.S. App. D.C. 382).

Where this section and first insurer's liability policy covering taxicab authoried cancellation only on filing of notice with public utility commission and insured, on obtaining new policy from second insurer, ceased paying premiums on first policy but first insurer had not, at time of taxicab accident, filed cancellation notice with commission, the first policy had not been canceled as against person injured in taxicab accident and the public. *Id.*

§ 44–303. Unlawful to operate vehicle without approved bond or policy.

It shall be unlawful to operate any vehicle subject to the provisions of this chapter unless such vehicle shall be covered by an approved bond or policy of liability insurance as provided in this chapter. (June 29, 1938, ch. 809, § 3, as added Aug. 28, 1958, 72 Stat. 953, Pub. L. 85–792, § 2.)

EFFECTIVE DATE

Section effective sixty days after Aug. 28, 1958, see section 17 of act Aug. 28, 1958, set out as a note under section 44–301.

§ 44–304. Commission authorized to make rules and regulations.

The Commission is empowered to make all reasonable rules and regulations which, in its opinion, are necessary to make effective the purposes of this chapter. (June 29, 1938, ch. 809, § 4, as added Aug. 28, 1958, 72 Stat. 953, Pub. L. 85–792, § 2.)

EFFECTIVE DATE

Section effective sixty days after Aug. 28, 1958, see section 17 of act Aug. 28, 1958, set out as a note under section 44–301.

NOTES TO DECISIONS

Display of stickers

Provisions requiring taxicab insurance and the display of a sticker evidencing such insurance is for the protection of pedestrians and others traveling the streets as well as for passengers, and the requirement is not limited to the times when the vehicle is being used or offered for hire. *Stewart* v. *District of Columbia* (D.C. Mun. App. 1944, 35 A. 2d 247).

Provision under this section requires taxicab to display current insurance sticker at all times, allegation in information charging failure to display sticker "while transacting business" may be treated as surplusage. *Id.*

§ 44–305. Alternate provisions for insurance coverage—Blanket policy for more than one vehicle—Sinking fund in lieu of insurance—Conditions for creation and maintenance of sinking fund—Proof of financial responsibility—Admission of liability by owner for tortious acts of drivers of vehicles—Sinking fund exempt from attachment or levy for other obligations of depositor.

(a) Any owner of a public vehicle required by this chapter to file a bond or policy of insurance may, in lieu thereof—

(1) file with the Commission a blanket bond or a blanket policy of liability insurance, in an amount to be approved by the Commission, but not to exceed $75,000, conditioned as required by this chapter, and covering all vehicles lawfully displaying the trade name or identifying design of any individual, association, company, or corporation; or

(2) create and maintain a sinking fund in such amount as the Commission may require, but not to exceed $75,000, and deposit the same, in trust, for the payment of any judgment recovered against such owner, as provided in this chapter, with such person, official, or corporation as the Commission shall designate. Such sinking fund shall not be created unless the Commission is satisfied that such owner is possessed and will continue to be possessed of financial ability to pay judgment obtained against such owner. If such a fund has been created, the Commission shall have authority to require whatever evidence of such owner's financial status may be necessary to satisfy the Commission that such owner is possessed and will continue to be possessed of financial ability to pay judgments obtained against such owner, and may at such time or times as, in its discretion, may be necessary, require such owner to submit in affidavit form detailed information from which such ability may be determined. When upon not less than five days' notice and a hearing pursuant to such notice (unless the right to such hearing is waived in writing by such owner) the Commission finds that any such owner having created and maintained a sinking fund is not possessed or probably will not continue to be possessed of financial ability to pay judgments obtained against such owner the Commission shall require that such owner file with the Commission a bond or policy of insurance as described in this chapter in lieu of such sinking fund and shall thereafter return to the owner the amount of such sinking fund when the Commission is satisfied that the maintenance thereof is not needed to assure the payment of any claim or judgment then outstanding against such owner. Failure to pay any judgment within thirty days after such judgment shall have become final shall constitute a reasonable ground for a finding by the Commission that the owner is not possessed of financial ability to pay judgments.

(b) If any owner elects to comply with paragraph (1) or (2) of subsection (a) of this section, he shall first file with the Commission an admission of liability, in conformity with the principle of respondeat superior, for the tortious acts of the driver or drivers of such vehicle or vehicles displaying the trade name or identifying design of the company or owner.

(c) Any cash or collateral deposit and/or any sinking fund provided for in this chapter shall be exempt from attachment or levy for any obligation or liability of the depositor except as provided in this chapter. (June 29, 1938, ch. 809, § 5, as added Aug. 28, 1958, 72 Stat. 953, Pub. L. 85–792, § 2.)

EFFECTIVE DATE

Section effective sixty days after Aug. 28, 1958, see section 17 of act Aug. 28, 1958, set out as a note under section 44–301.

§ 44–306. "Owner" defined.

Within the meaning of this chapter, the word "owner" shall include any corporation, company, association, joint-stock company or association, partnership or person, and the lessees, trustees, or receivers appointed by any court whatsoever, permitting his, their, or its trade name and/or identifying design to be displayed upon vehicles governed by this chapter. (June 29, 1938, ch. 809, § 6, as added Aug. 28, 1958, 72 Stat. 954, Pub. L. 85–792, § 2).

EFFECTIVE DATE

Section effective sixty days after Aug. 28, 1958, see section 17 of act Aug. 28, 1958, set out as a note under section 44–301.

§ 44–307. Penalties.

Each violation of this chapter or of the regulations lawfully promulgated thereunder shall be deemed a misdemeanor and upon conviction shall be punishable by a fine of not more than $300 or by imprisonment for not more than ninety days, and/or cancellation of license. (June 29, 1938, ch. 809, § 7, as added Aug. 28, 1958, 72 Stat. 954, Pub. L. 85–792, § 2).

EFFECTIVE DATE

Section effective sixty days after Aug. 28, 1958, see section 17 of act Aug. 28, 1958, set out as a note under section 44–301.

Chapter 4. EMPLOYERS' LIABILITY

Sec.
44–401. Liability of common carriers for injuries to employees.
44–402. Contributory negligence no bar to recovery.
44–403. Insurance contracts no bar to recovery.
44–404. Suit to be brought within one year.
44–405. Certain prior laws not affected.

§ 44–401. Liability of common carriers for injuries to employees.

Every common carrier engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States, or between any territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, shall be liable to any of its employees, or, in the case of his death, to his personal representative for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways, or works. (June 11, 1906, 34 Stat. 232, ch. 3073, § 1.)

CROSS REFERENCES

Actions for wrongful death in general, see §§ 16–2701 to 16–2703.

Employers' Liability Act (Railroads), see 45 U.S.C. § 51 et seq.

Limitations on duties of carriers and rights of employees, see § 44–405.

Longshoremen's and Harbor Workers' Compensation Act, see § 36–501.

Time of commencement of action, see § 44–404.

NOTES TO DECISIONS

In general

Act March 4, 1097, 34 Stat. 1415, ch. 2939, § 1, is materially different from Act June 11, 1906, 34 Stat. 232. *Baltimore & O.R. Co.* v. *Interstate Commerce Comm.* (1911, 31 S. Ct. 621, 221, U.S. 612, 55 L. Ed. 878). See, also *United States* v. *Chicago, M. & P. R. Co.* (1915, 218 F. 701).

This act relates solely to commerce. *Southern R. Co.* v. *Taylor* (1927, 16 F. 2d 517, 57 App. D. C. 21, certiorari denied 47 S. Ct. 571, 273 U.S. 767, 71 L. Ed. 882).

The intent of Congress in the enactment of this statute, was plainly to create liability on the part of the carriers to their employees and to curtail a part of the defenses which were before legal. *Malloy* v. *Northern Pac. R. Co.* (C. C. Wash. 1907, 151 F. 1019).

Act prospective in operation. *Winfree* v. *Northern P. R. Co.* (C. C. Wash. 1908, 164 F. 698, affirmed 173 F. 65, 97 C.C.A. 392, 44 L. R. A., N. S., 841, affirmed 33 S. Ct. 273, 227 U.S. 296, 57 L. Ed. 518).

This case distinguishes the extent of liability under this act and that of the act of 1908 (U. S. Comp. St. Supp., p. 1148). *Taylor* v. *Southern R. Co.* (C. C. Ga. 1910, 178 F. 380).

Application

Where appellant was injured while working in appellee's car barn, he could not recover under this section since § 36–501 has become the applicable workman's compensation act for the District and appellee was not a common carrier by railroad and is excepted from the operation of § 36–501. *Keffer* v. *Capital Transit Co.* (1950, 183 F. 2d 808, 87 U. S. App. D. C. 13).

Assumption of risk

This act so far as assumption of risk is concerned, as applied to the District of Columbia, is superseded by section 4 of the act of April 22, 1908. *Washington Terminal Co.* v. *Sampson* (1923, 289 F. 577, 53 App. D. C. 179).

Where plaintiff was injured while operating an unboxed saw in the car shops of defendant, an interstate railway company, by which he was employed, plaintiff did not assume the risk of voluntarily accepting employment in the shop, though the danger was obvious. *Malloy* v. *Northern Pac. R. Co.* (C.C. Wash. 1907, 151 F. 1019).

Constitutionality

Act held unconstitutional in part. *Howard* v. *Illinois Cent. R. Co.* (1908, 28 S. Ct. 141, 207 U. S. 463, 52 L. Ed. 297).

Validity of section, see *Howard* v. *Illinois C. R. Co.* (1908, 28 S. Ct. 141, 207 U. S. 463, 52 L. Ed. 297). See, also, *Philadelphia, B. & W. R. Co.* v. *Schubert* (1912, 32 S. Ct. 589, 224 U.S. 603, 56 L. Ed. 911); *Chicago, I. & L. R. Co.* v. *Hackett* (1918, 38 S. Ct. 581, 228 U. S. 559, 57 L. Ed. 966); *Pedersen* v. *Delaware, L. & W. R. Co.* (1913, 33 S. Ct. 648, 229 U. S. 146, 57 L. Ed. 1125); *Howard* v. *Illinois Cent. R. Co.* (C. C. Tenn. 1907, 148 F. 997); *Hall* v. *Chicago, R. I. & P. R. Co.* (C. C. Iowa 1907, 149 F. 564); *Spain* v. *St. Louis & S. F. R. Co.* (C. C. Ark. 1907, 151 F. 522); *Lancer* v. *Anchor Line* (D. C. N. Y. 1907, 155 F. 433); *Smelzer* v. *St. Louis & S. F. R. Co.* (C. C. Ark. 1908, 158 F. 649); *United States* v. *Southern R. Co.* (D. C. Ala. 1908, 164 F. 347); *Missouri Pac. R. Co.* v. *Castle* (C. C. A. 8, 1909, 172 F. 841); *Oregon R. & N. Co.* v. *Campbell* (C. C. Ore. 1910, 177 F. 318); *Chicago, M. & St. P. R. Co.* v. *Westby* (C. C. A. 8, 1910, 178 F. 619); *Zikos* v. *Oregon R. & Nav. Co.* (C. C. Wash. 1910, 179 F. 893); *McCabe* v. *Atchison, T. & S. F. R. Co.* (C. C. A. 8, 1911, 186 F. 966); *St. Louis, I. M. & S. R. Co.* v. *Conley* (C. C. A. 8, 1911, 187 F. 949); *United States* v. *St. Louis, S. W. R. Co.* (D. C. Tex. 1911, 189 F. 954); *Cain* v. *Southern R. Co.* (C. C. Tenn. 1912, 199 F. 211).

Constitutional so far as relates to District of Columbia and Territories, in which places section supersedes prior territorial legislation. *El Paso & N. E. R. Co.* v. *Gutierrez* (1909, 30 S. Ct. 21, 215 U. S. 87, 54 L. Ed. 106). See, also, *Butts* v. *Merchants & Miners Transp. Co.* (1913, 33 S. Ct. 964, 230 U. S. 126, 57 L. Ed. 1422); *Southern Pac. Co.* v. *McGinnis* (C. C. A. 5, 1910, 174 F. 649).

Act is valid in District of Columbia and Territories. *El Paso & N. E. R. Co.* v. *Gutierrez* (1909, 30 S. Ct. 21, 215 U.S. 87, 54 L. Ed. 106). See, also, *Pawnee* (D.C. Mich. 1913, 205 F. 333); *Friday* v. *Santa Fe Cent. R. Co.* (1912, 120 Pac. 316, 16 N. Mex. 434, affirmed 34 S. Ct. 468, 232 U.S. 694, 58 L. Ed. 802); *Gutierrez* v. *El Paso & N.E. R. Co.* (1909, 117 S. W. 426, 102 Tex. 378); *Atchison, T. & S. F. R. Co.* v. *Pickens* (Tex. Civ. App. 1909, 118 S.W. 1133); *Missouri, K. & T. R. Co.* v. *Poole* (Tex. Civ. App. 1910, 123 S. W. 1176); *Missouri, K. & T. R. Co.* v. *Rogers* (Tex. Civ. App. 1910, 128 S. W. 710); *Atchison, T. & S. F. R. Co.* v. *Tack* (Tex. Civ. App. 1910, 130 S. W. 596). Contra, *Atchison, T. & S. F. R. Co.* v. *Mills* (1916, 180 S. W. 596, 49 Tex. Civ. App. 349).

Statute applicable locally in District of Columbia, though unconstitutional as to the States. *Washington, A. & Mt. V. R. Co.* v. *Downey* (1915, 35 S. Ct. 406, 236 U. S. 190, 59 L. Ed. 533).

Construction with other laws

Insofar as it applies to the District of Columbia and the Territories this act was not repealed by the Employers' Liability Act of April 22, 1908, 35 Stat. 65, ch. 149. *Walsh* v. *Alaska S.S. Co.* (1918, 172 Pac. 269, 101 Wash. 295).

Elevator in office building

Railroad company operating elevator in office building held not a "common carrier." *Southern R. Co.* v. *Taylor* (1927, 16 F. 2d 517, 57 App. D. C. 21, certiorari denied 47 S. Ct. 571, 273 U. S. 767, 71 L. Ed. 882).

Insurance contracts

Insurance contracts as a defense. *Philadelphia, B. & W. R. Co.* v. *Schubert* (1912, 32 S. Ct. 589, 224 U. S. 603, 56 L. Ed. 911).

Interstate commerce

"Interstate" and "intrastate" commerce. *Hall* v. *Louisville & N. R. Co.* (C. C. Fla. 1908, 157 F. 464).

The question of the creation of right of action, by State or by Federal act, depends on whether the carrier is engaged in interstate or intrastate commerce. *Id.*

Personal representatives

Right of action to personal representatives. *Winfree* v. *Northern Pac. R. Co.* (C. C. A. 9, 1909, 173 F. 65, 44 L.R.A., N.S., 841, affirmed 38 S. Ct., 227 U. S. 296, 57 L. Ed. 518).

Territories

United States District Court in Territory of New Mexico had jurisdiction of cases arising under this act. *Santa Fe Cent. R. Co.* v. *Friday* (1914, 34 S. Ct. 468, 232 U. S. 694, 58 L. Ed. 802).

Unconstitutional as applied to Oklahoma. *Chicago, R. I. & P. R. Co.* v. *Holliday* (1915, 145 Pac. 786, 45 Okla. 536).

Vessels

Not applicable to marine torts within admiralty jurisdiction. *Alaska S. S. Co.* v. *McHugh* (1925, 45 S. Ct. 396, 268 U. S. 23, 69 L. Ed. 825).

This act does not have the same effect as regards ship owners engaged in coastwise trade in Alaska as it does in the District of Columbia. *Id.*

Act does not apply to vessels generally. *Pawnee* (D. C. Mich. 1913, 205 F. 333).

Applies to action for death of sailor from injuries received on vessel used as common carrier in Alaska. *Sandstrom* v. *Pacific S. S. Co.* (C. C. A. 9, 1919, 260 F. 661).

Act June 11, 1906, where territorially applicable, embraces carriers by water and modifies or repeals inconsistent admiralty or maritime laws. *Walsh* v. *Alaska S. S. Co.* (1918, 172 Pac. 269, 101 Wash. 295).

Act June 11, 1906, applies to the case of a seaman, employed on a vessel engaged in commerce within the Territory of Alaska and between ports thereof and of the State of Washington, who was injured while unloading a cargo at an Alaska port. *Id.*

§ 44–402. Contributory negligence no bar to recovery.

In all actions brought against any common carriers to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributed negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. All questions of negligence and contributory negligence shall be for the jury. (June 11, 1906, 34 Stat. 232, ch. 3073, § 2.)

CROSS REFERENCES

Employers' Liability Act (Railroads), see 45 U.S.C. § 51 et seq.

Limitations on duties of carriers and rights of employees, see § 44–405.

Time of commencement of action, see § 44–404.

NOTES TO DECISIONS

Constitutionality

Validity of section, see *Howard* v. *Illinois Cent. R. Co.* (1908, 28 S. Ct. 141, 207 U.S. 463, 52 L. Ed. 297. See, also, *Brooks* v. *Southern Pac. Co.* (C.C. Ky. 1907, 148 F. 986); *Snead* v. *Central of Georgia R. Co.* (C.C. Ga. 1907, 151 F. 608); *Plummer* v. *Northern Pac. R. Co.* (C.C. Wash. 1907, 152 F. 206); *Kelley* v. *Great Northern R. Co.* (C. C. Minn. 1907, 152 F. 211).

Contributory negligence

Contributory negligence and assumed risk, see *Powell* v. *Wisconsin Cent. R. Co.* (C. C. A. 8, 1908, 159 F. 864).

One is liable for negligence proximately causing the injury, regardless of contributory negligence. *Atchison, T. & S. F. R. Co.* v. *Mills* (1909, 116 S. W. 852, 53 Tex. Civ. App. 359).

Interstate commerce

"Interstate" and "intrastate" commerce, see *Hall* v. *Chicago, R. I. & P. R. Co.* (C. C. Iowa 1907, 149 F. 564).

§ 44–403. Insurance contracts no bar to recovery.

No contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee: *Provided, however,* That upon the trial of such action against any common carrier the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee, or, in case of his death, to his personal representative. (June 11, 1906, 34 Stat. 232, ch. 3073, § 3.)

CROSS REFERENCES

Employers' Liability Act (Railroads), see 45 U.S.C. § 51 et seq.

Limitations on duties of carriers and rights of employees, see § 44–405.

Time of commencement of action, see § 44–404.

NOTES TO DECISIONS

In general

Act prospective in operation. *Hall* v. *Chicago, R. I. & P. R. Co.* (C. C. Iowa 1907, 149 F. 564).

Risk

Assumed risk, see *Malloy* v. *Northern Pac. R. Co.* (C. C. Wash. 1907, 151 F. 1019).

§ 44–404. Suit to be brought within one year.

No action shall be maintained under sections 44–401 to 44–405, inclusive, unless commenced within one year from the time the cause of action accrued. (June 11, 1906, 34 Stat. 232, ch. 3073, § 4.)

CROSS REFERENCES

Employers' Liability Act (Railroads), see 45 U.S.C. § 51 et seq.

Limitations on duties of carriers and rights of employees, see § 44–405.

NOTES TO DECISIONS

Limitation

Limitation fixed by this act governs action against traction company operating in District of Columbia. *Mangum* v. *Capital Trac. Co.* (1930, 39 F. 2d 286, 59 App. D. C. 241).

Time limit for action. *Winfree* v. *Northern Pac. R. Co.* (C.C.A. 9, 1909, 173 F. 65, 44 L.R.A., N.S., 841, affirmed 33 S. Ct. 273, 227 U. S. 296, 57 L. Ed. 518).

Action for death is barred after one year from date of death. *Sandstrom* v. *Pacific S. S. Co.* (C. C. A. 9, 1919, 260 F. 661).

§ 44–405. Certain prior laws not affected.

Nothing in sections 44–401 to 44–404, inclusive, shall be held to limit the duty of common carriers by railroads or impair the rights of their employees under the safety-appliance Act of March 2, 1893, as amended April 1, 1896, and March 2, 1903. (June 11, 1906, 34 Stat. 233, ch. 3073, § 5.)

REFERENCES IN TEXT

Act Mar. 2, 1893 as amended, referred to in text, is classified generally to 45 U.S.C. ch. 1.

CROSS REFERENCES

Employers' Liability Act (Railroads), see 45 U.S.C. § 51 et seq.

Time of commencement of action, see § 44–404.

TITLE 45.—REAL PROPERTY

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Chapter 1.—CONVEYABLE ESTATES AND METHODS OF CONVEYANCE

Sec.

45–101. Present, future, vested, and contingent interests conveyed by deed or will.
45–102. Perpetuities—Excepting charitable uses.
45–103. Chattels real.
45–104. Estates created by deed or will.
45–105. Conveyance of land held adversely.
45–106. Creation of term in excess of one year to be by deed or will.
45–107. Pension and employee trusts—Laws against perpetuities does not apply.

§ 45–101. Present, future, vested, and contingent interests conveyed by deed or will.

Any interest in or claim to real estate whether entitling to present or future possession and enjoyment, and whether vested or contingent, may be disposed of by deed or will, and any estate which would be good as an executory devise, may be created by deed. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 512; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, deleted "at common law" which came after "would be good."

CROSS REFERENCES

Conveyance or incumbrance by husband of property acquired after insanity or absence of seven years of wife, see § 19–104.

Release of dower generally, see § 30–216.

Statute of frauds, see §§ 28–3501, 28–3503.

NOTES TO DECISIONS

Assignments

Where testatrix devised realty to her daughter for life and then to testatrix's three sons and the issue of the daughter, if any, in fee simple, the issue to take a one-fourth part, and if daughter die without issue then to the three sons, their heirs and assigns forever share and share alike, a son's interests, whether contingent or vested, were assignable, but he could assign only that which he had. *Pyne* v. *Pyne* (1946, 154 F. 2d 297, 81 U. S. App. D. C. 11).

Where remainderman's interest was subject to be divested in event of his death, leaving a descendant, prior to death of life tenant, remainderman's assignment of his interest was ineffective as against his descendant on death of remainderman prior to death of the life tenant. *Id.*

Permanence

Once title vests, it stays vested until it passes by grant, by descent, by adverse possession or by some operation of law such as escheat or forfeiture; but title does not pass by inaction on the part of the owner. *Faulks* v. *Schrider* (1938, 99 F. 2d 370, 69 App. D. C. 137).

Reverter interests

A possibility of reverter is not an estate under the District Code but it is an interest in property and any interest in property may be disposed of by deed or will. *Scott* v. *Powell* (1950, 182 F. 2d 75, 86 U. S. App. D. C. 277).

§ 45–102. Perpetuities—Excepting charitable uses.

Except in the case of gifts or devises to charitable uses, every future estate, whether of freehold or leasehold, whether by way of remainder or without a precedent estate, and whether vested or contingent, shall be void in its creation which shall suspend, or may by possibility suspend, the power of absolute alienation of the property, so that there shall be no person or persons in being by whom an absolute fee in the same, in possession, can be conveyed, for a longer period than during the continuance of not more than one or more lives in being and twenty-one years thereafter. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1023.)

NOTES TO DECISIONS

In general

Rule against perpetuities was inapplicable. *Hopkins* v. *Grimshaw* (1897, 17 S. Ct. 401, 165 U. S. 342, 41 L. Ed. 739).

The provisions of this section are made applicable to personalty as well as realty by § 45–823. *Burdick* v. *Burdick* (D.C.D.C. 1940, 33 F. Supp. 921).

Agreement of parties

A decree affecting rights under will will be reversed on agreement of parties to enter decree in accordance with agreement. *McDonald* v. *Maxwell* (1926, 12 F. 2d 822, 56 App. D. C. 287).

Alienation of accumulations

There is in the District of Columbia no specific statutory limitation upon restraint on alienation of accumulations. *Burdick* v. *Burdick* (D.C.D.C. 1940, 33 F. Supp. 921).

Under the "common law" of the United States and of the District of Columbia, accumulation of income of a testamentary trust is permitted for as long as the period of the rule against perpetuities. *Gertman* v. *Burdick,* (1942, 123 F. 2d 924, 75 U. S. App. D. C. 48, 152 A. L. R. 645, certiorari denied 62 S. Ct. 917, 315 U. S. 824, 86 L. Ed. 1220).

The provision of a testamentary trust which did not violate the rule against perpetuities or this section in creating a trust to be effective for 21 years after death of two named nieces of testator, directing that remainder of trust income after the payment of certain annuities should be reinvested by trustee for increase and benefit of trust fund, was valid under the established common law, not-

withstanding amount of income directed to be accumulated was quite large. *Id.*

Alternative contingency

If the testator distinctly makes his gift over to depend upon what is sometimes called an alternative contingency, or upon either of two contingencies, one of which may be too remote and the other cannot be, its validity depends upon the event. *Wills* v. *Maddox* (1916, 45 App. D.C. 128, certiorari denied 37 S. Ct. 113, 240 U.S. 640, 61 L. Ed. 541).

Charitable trust defined

One of the distinguishing elements of a charitable trust is the indefiniteness permitted as to beneficiaries so that a trust to be used for assisting deserving applicants for admission to a home, who are unable to furnish necessary money, is valid. *Washington Loan & Trust Co.* v. *Hammond* (1922, 278 F. 569, 51 App. D. C. 260).

Class membership

A life estate left to a class consisting of persons in being but which may open and let in other members who are not in being at the time of the testator's death would be obnoxious to the rule against perpetuities. *Lewis* v. *Cockrell* (D.C.D.C. 1948, 80 F. Supp. 380).

Construction avoiding repugnancy

Where will showed that testator intended to create life estate for widow, to be followed by life estates for his two daughters, and that upon daughters' deaths property should pass to testator's grandchildren and trust created by will provided that "the income thereof * * * shall be equally divided between my two daughters * * * and in the event of the death of either or both, to the use and benefit of their respective child or children" the last part of such provision would be construed to read "and in the event of the death of either or both, the remainder to the use and benefit of their respective child or children", particularly where a literal construction would be repugnant to prohibition against unlawful suspension of alienation and to the rule against perpetuities. *Lewis* v. *Cockrell* (D.C.D.C. 1948, 80 F. Supp. 380).

Contingent remainderman

Where remainder had not vested, the invalidity of prior devise would not benefit contingent remainderman but intestacy would result as to the property covered by the prior devise. *Lewis* v. *Cockrell* (D.C.D.C. 1948, 80 F. Supp. 380).

Devise to trustees

Devise to trustees did not create a perpetuity, that is, no limitation upon the property beyond the period of a life or lives in being and twenty-one years. *Ould* v. *Washington Hosp. for Foundlings* (1877, 95 U.S. 303, 5 Otto 303, 24 L. Ed. 450).

In suit involving validity of a devise of real estate to foreign cemetery association in trust, for care of lot in District of Columbia, such trust is valid by principle of comity and equity will not allow trust to fail for want of trustee and if necessary will appoint a trustee to carry it into effect. *Iglehart* v. *Iglehart* (1905, 26 App. D.C. 209, affirmed 27 S. Ct. 329, 204 U.S. 478, 51 L. Ed. 575).

Where will placed residue of estate in trust for benefit of testator's wife for life and at her death one-half of corpus was given to the testator's sisters and brothers, and the other half remained in trust for an adopted daughter at whose death the income was to go to her children then living or the issue thereof as might then be dead, leaving issue surviving, and upon the death of each, the share of the one so dying should go absolutely to the persons who should be their heirs at law, life estate to the adopted daughter's children had to vest, if at all, at the termination of the preceding life estates of the widow and adopted daughter, and where both children of the adopted daughter were lives in being at the testator's death, the remainders limited to their heirs must vest, if at all, within the period of the rule against perpetuities, and where the children of such children were born after the testator died, the remainders over at their deaths were invalid. *American Security and Trust Co., etc.,* v. *M. D. Cramer et al.* (D.C.D.C. 1959, 175 F. Supp. 367).

Where testator left residuary estate to trustees to invest and reinvest for 21 years after death of two nieces, to pay annuities from the income and reinvest the remainder, the trustees had at all times power to alienate, and the trust did not violate the statute relating to restraint on alienation. *Burdick* v. *Burdick* (1940, 33 F. Supp. 921, reversed on other grounds 123 F. 2d 924, 75 U. S. App. D. C. 48, 152 A. L. R. 645, certiorari denied 62 S. Ct. 917, 315 U. S. 824, 86 L. Ed. 1220).

Future interests

If a will attempts to make income from testator's estate payable to testator's children for life and then to create life estates in offspring of children, if there be any, for an indefinite number of generations, the rule against perpetuities would be violated, and the gift would be void. *Hilton* v. *Kinsey et al.* (1951, 185 F. 2d 885, 88 U.S. App. D.C. 14, 23 A.L.R. 2d 830).

Under will creating a trust until 21 years after death of survivor of two named nieces of testator and directing that trust cease at expiration of 21 years after the two lives in being, the future interests created did not violate the "rule against perpetuities." *Gertman* v. *Burdick* (1942, 123 F. 2d 924, 75 U. S. App. D. C. 48, 152 A. L. R. 645, certiorari denied 62 S. Ct. 917, 315 U. S. 824, 86 L. Ed. 1220).

Gifts to charitable uses

"Gifts to charitable uses do not come within the purview of the law against perpetuities." *Washington Loan & Trust Co.* v. *Hammond* (1922, 278 F. 569, 51 App. D. C. 260).

Incapacity of ultimate taker

The capacity of the ultimate takers is irrelevant on the question whether a future estate violates this section, and it is the instrument creating the future estate which must be examined to determine whether the estate violates this section. *Gertman* v. *Burdick* (1942, 123 F. 2d 924, 75 U. S. App. D. C. 48, 152 A. L. R. 645, certiorari denied 62 S. Ct. 917, 315 U. S. 824, 86 L. Ed. 1220).

This section was not intended to make void in its creation any future estate which is limited to take effect immediately at the expiration of the statutory period for the reason that one of the takers has temporary incapacity to convey. *Id.*

Under will creating a trust until 21 years after death of survivor of two named nieces of testator and directing that trust cease at expiration of 21 years after the two lives in being, the future interests created did not violate this section merely because, at the termination of the trust, the taker might be an infant who would be a person incapable of alienating an absolute fee. *Id.*

Partial validity

Trust created by will was void except as to one provision, as an attempt to create a perpetuity. *Landram* v. *Jordan* (1907, 27 S. Ct. 17, 203 U.S. 56, 51 L. Ed. 88).

Where immediate testamentary trust gifts of life estate to widow and remainders to two nephews were valid and severable from subsequent gifts to others, if such subsequent gifts were invalid, such invalidity, under statutory rule against perpetuities, would not affect validity of prior gifts to widow and nephews. *Bliss, Jr.* v. *McD. Shea, and National Savings and Trust Co.* (1956, 230 F. 2d 825, 97 U. S. App. D. C. 275).

Where testamentary trust remote gifts were severable from immediate gifts to widow and nephews, court, in will construction case, would not actually determine validity of such remote gifts, but would construe will only, so far as necessary, to determine issue of validity of immediate gifts. *Id.*

Where there is a statutory permissible period, an accumulation of income of a testamentary trust is bad only with respect to the excess, whereas an accumulation that violates the common law of lives in being plus 21 years is void in its entirety. *Gertman* v. *Burdick* (1942, 123 F. 2d 924, 75 U. S. App. D. C. 48, 152 A. L. R. 645, certiorari denied 62 S. Ct. 917, 315 U. S. 824, 86 L. Ed. 1220).

Where testamentary exercise of power, which created trust for testator's widow for life and then for daughters until they should reach age of 25, was invalid as unduly suspending power of alienation, widow's life interest could not be validated by being separated from other provisions. *Mondell* v. *Thom* (1944, 143 F. 2d 157, 79 U. S. App. D. C. 145).

Power of appointment

A testamentary exercise of power of appointment, creating a trust for testator's widow for life and thereafter for daughters until they should reach age of 25, when daughters might take their shares outright, was invalid though widow was alive when donor of power died, since daughter might reach 25 more than 21 years after widow's death. *Mondell* v. *Thom* (1944, 143 F. 2d 157, 79 U. S. App. D. C. 145).

The rule that facts existing when donee of power dies, exercising the power by will, may be considered in determining whether absolute ownership vests under exercise of power during lives in being, plus 21 years, would not save testamentary exercise of power by one dying in 1942, where beneficiary born in 1940 would not have taken her share by reaching age of 25 within 21 years of her mother's death if mother had died before 1944. *Id.*

Facts existing when donee of power of appointment dies exercising the power by will, may be considered in determining whether absolute ownership is to vest under exercise of the power during lives in being, plus 21 years from death of donor. *Id.*

Power to alienate suspended

Where trustees under a will have at all times the power to alienate, the trust does not violate provisions of this section, and the possibility of suspension of the power of alienation because of infancy or disability of beneficiaries at date of distribution does not invalidate the trust, such suspension being made by law and not by the will. *Burdick* v. *Burdick* (D.C.D.C. 1940, 33 F. Supp. 921, reversed on other grounds 123 F. 2d 924, 75 U.S. App. D.C. 48, 152 A. L. R. 645, certiorari denied 62 S. Ct. 917, 315 U.S. 824, 86 L. Ed. 1220).

Sections construed

This section and § 669 (§ 27–113) can be harmonized and construed together—this section applying to cases other than those specially provided for in § 669 (§ 27–113). *Iglehart* v. *Iglehart* (1907, 27 S. Ct. 329, 204 U.S. 478, 51 L. Ed. 575).

Time when period begins

In determining validity of exercise of power of appointment, period during which power of alienation might be suspended began at death of donor of the power. *Mondell* v. *Thom* (1944, 143 F. 2d 157, 79 U.S. App. D.C. 145).

§ 45–103. Chattels real.

The provisions aforesaid as to future estates shall apply to limitations of chattels real as well as to freehold estates, so that the absolute ownership of a term for years and power to dispose of the same shall not be suspended for a longer period than the absolute power of alienation in respect to a fee simple. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1024.)

§ 45–104. Estates created by deed or will.

Subject to the provisions aforesaid, a freehold estate as well as a chattel real may be created by deed or will to commence at a future day, absolutely or conditionally; an estate for life may be created in a term for years and a remainder limited thereon; a remainder of freehold or for years, either vested or contingent, may be created expectant on the determination of a term for years, and a fee may be limited on a fee upon a contingency which must happen, if at all, within the period herein prescribed. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1025.)

§ 45–105. Conveyance of land held adversely.

Any person claiming title to land may convey his interest in the same, notwithstanding there may be an adverse possession thereof. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 513.)

§ 45–106. Creation of term in excess of one year to be by deed or will.

No estate of inheritance, or for life, or for a longer term than one year, in any real property, corporeal or incorporeal, in the District of Columbia, or any declaration or limitation of uses in the same, for any of the estates mentioned, shall be created or take effect, except by deed signed and sealed by the grantor, lessor, or declarant, or by will. (Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 492; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, substituted "or by will" for "and acknowledged in the manner herein provided."

CROSS REFERENCE

Statute of frauds, see § 28–3501.

NOTES TO DECISIONS

Estoppel

"Where one of two contracting parties has been induced or allowed to alter his position on the faith of a contract within the statute, to such an extent that it would be fraud on the part of the other party to set up its invalidity, courts of equity hold that the clear proof of the contract and of the acts of part performance will take the case out of the operation of the statute, if the acts of part performance were clearly such as to show that they are properly referable to the parol agreement." *Kresge* v. *Crowley* (1917, 47 App. D.C. 13).

Leases—Acknowledgment

Lease for rooms in office building was perfectly valid conveyance as between the parties to it, and the parties to this action, although not acknowledged. *Munsy Trust Co.* v. *Alexander* (1930, 42 F. 2d 604, 59 App. D. C. 369).

—— Agents

Where rental agent executed a lease to owner's property for term of more than one year, such lease was ineffectual beyond one-year period even though agent had authority from owner to execute it, as such a lease was an attempt by an agent to convey an owner's interest in real estate and was prohibited by this section. *Paul* v. *Holloway, Agent etc.* (D. C. Mun. App. 1956, 124 A. 2d 587).

Where by terms of lease the agent-lessor formally let and demised property to lessee for a term and in the acknowledgment the instrument was referred to as deed of lease, deed, and "act and deed" of the parties and instrument was signed and sealed by agent-lessor, such instrument was a conveyance which satisfied this section requiring that a lease shall be evidenced by deed signed and sealed by the lessor and consequently lessee was not a tenant by sufferance. *Paul* v. *Holloway* (D. C. Mun. App. 1956, 122 A. 2d 774).

—— Covenant of renewal

Where lessor had only a life estate, the rights under the lease expired with her and the remaindermen, by accepting rent after her death, are not estopped to defend against the covenant of renewal in the lease. *Velati* v. *Dante* (1912, 39 App. D.C. 372, certiorari denied 33 S. Ct. 462, 227 U.S. 679, 57 L. Ed. 700).

—— Designation of parties

Where body of lease properly designated corporate lessor and individual lessee as such, transposition in attestation clause of words lessee and lessor in such manner as to make clause indicate that individual lessee was the corporation did not invalidate the lease, since intent of parties was perfectly apparent from entire lease, and transposition was mere clerical error. *Capital Linoleum Co.* v. *Savage* (D. C. Mun. App. 1952, 91 A. 2d 564).

—— Not under seal

Although contract for lease of office rooms was not under seal, it was entitled to specific performance, lessor having spent considerable money in remodeling and lessee having occupied for two years. *Hoffman* v. *F. H. Duehay, Inc.* (1933, 65 F. 2d 839, 62 App. D. C. 206).

A lease for more than a year must be in the form of a deed, signed and sealed by grantor, but there is no

requirement that a lease for less than year be under seal. *Binder et al.* v. *Jaffe* (D. C. Mun. App. 1953, 101 A. 2d 260).

—— Tenants in common

A lease for eight years (with privilege of renewal) by one tenant in common is void as to the other tenants who did not sign and seal the lease. The acknowledgment of the lessor was not and could not have been as agent or attorney for her co-owners. *Velati* v. *Dante* (1912, 39 App. D. C. 372, certiorari denied 33 S. Ct. 462, 227 U. S. 679, 57 L. Ed. 700).

No amount of acquiescence by the remaining tenants could affect their rights, in the absence of power in the lessor to act as trustee for them, in the execution of the lease. *Id.*

Parol agreement

An alleged parol agreement by lessor to give lessees after expiration of lease an additional five-year term was not enforceable in absence of evidence of lessor's fraud or execution of the agreement, in view of this section specifying the requirements for a lease for longer than one year and section 301 of title 12 that such a lease shall be an estate by sufferance. *Ross* v. *Brainerd* (D. C. Mun. App. 1947, 54 A. 2d 859).

Statutory compliance

Measuring the instrument by the statutory requirements, enlightened by the forms set forth, which cannot be disregarded, it is not sufficient to grant or create any estate or use in the property since a deed is a written expression of the act of creating an estate or use in land. *Schooler* v. *Schooler* (1948, 173 F. 2d 299, 84 U. S. App. D. C. 147).

§ 45–107. Pension and employee trusts—Laws against perpetuities does not apply.

Any pension, profit-sharing, stock bonus, annuity, disability, death benefit, or other employee trusts heretofore or hereafter established by employers for the purpose of distributing the income or the principal thereof, or the principal and income thereof to some or all of their employees, or the beneficiaries of such employees, shall not be invalid as violating any laws of the District of Columbia against perpetuities, against restraints on the power of alienation of title to property, or against accumulation of income, but such trusts may continue for such period of time as may be required by the provisions thereof to accomplish the purposes for which they are established. (Aug. 25, 1959, 73 Stat. 428, Pub. L. 86–201, § 1.)

CROSS REFERENCE

Perpetuities, generally, see § 45–102.

Chapter 2.—INTERPRETATION OF INSTRUMENTS

Sec.
45–201. Words of inheritance unnecessary.
45–202. Words "grant" or "bargain and sell" pass whole estate.
45–203. Remainder to heirs—Rule in Shelley's case abolished.
45–204. Posthumous children.
45–205. Die without issue or without leaving issue refers to time of death.

§ 45–201. Words of inheritance unnecessary.

No words of inheritance shall be necessary in a deed or will to create a fee simple estate; but every conveyance or devise of real estate shall be construed and held to pass a fee simple estate or other entire estate of the grantor or testator, unless a contrary intention shall appear by express terms or be necessarily implied therein. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 502.)

NOTES TO DECISIONS

Construction

Deeds and wills must be construed in accordance with intention of parties insofar as it can be discerned from text of instrument. *V. M. Simmons and J. V. Queen* v. *T. V. Rosemond et al.* (D.C.D.C. 1963, 223 F. Supp. 61).

Words of art

The requirement that words of art, such as "and his heirs" or "in fee simple," or any similar phrase, be used in order to create estate in fee simple has been abolished in District of Columbia by statute providing in effect that a conveyance or device to A without anything more grants an estate in fee simple unless the intention of the parties appears to be the contrary. *V. M. Simmons and J. V. Queen* v. *T. V. Rosemond et al.* (D.C.D.C. 1963, 223 F. Supp. 61).

Words of limitation

When word "heir" is used in will as one of limitation, it must be given that effect, but contrary is true, if its use in context clearly indicates that it is intended to constitute a disposition by purchase. *Greenwood* v. *Page* (1944, 138 F. 2d 921, 78 U. S. App. D. C. 166).

§ 45–202. Words "grant" or "bargain and sell" pass whole estate.

The word "grant," and the phrase "bargain and sell," or any other words purporting to transfer the whole estate shall be construed to pass the whole estate and interest in the property described, unless there be limitations or reservations showing a different intent. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 503; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, deleted "of the grantor" which appeared after "and interest."

§ 45–203. Remainder to heirs—Rule in Shelley's case abolished.

Where a remainder shall be limited to the heirs or heirs of the body of a person to whom a life estate in the same premises shall be given, the persons, who, on the termination of the life estate, shall be the heirs or the heirs of the body of such tenant for life shall be entitled to take in fee simple as purchasers by virtue of the remainder so limited. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1027.)

NOTES TO DECISIONS

Construction

Deeds and wills must be construed in accordance with intention of parties insofar as it can be discerned from text of instrument. *V. M. Simmons and J. V. Queen* v. *T. V. Rosemond et al.* (D.C.D.C. 1963, 223 F. Supp. 61).

Prior law

Where death of decedent occurred in 1900, before enactment of statute, the common-law rule applied. *Noyes* v. *Parker* (1937, 92 F. 2d 562, 68 App. D. C. 13).

Shelley's case

The rule in Shelley's case has been abolished in District of Columbia by statute providing in effect that if one grants an estate to A for life, remainder to his heirs, A receives a life estate and his heirs take a fee simple upon his death. *V. M. Simmons and J. V. Queen* v. *T. V. Rosemond et al.* (D.C.D.C. 1963, 223 F. Supp. 61). Testatrix' daughter and granddaughter took life estates and not estates in fee simple under will devising realty to daughter and granddaughter share an share alike, with granddaughter's share going to daughter in event of granddaughter's death without issue and to granddaughter's issue in event of grandaughter's death with issue, and with daughter's share descending to her children per capita. *Id.*

§ 45–204. Posthumous children.

Where a future estate shall be limited to heirs, or issue, or children, posthumous children shall be en-

titled to take in the same manner as if living at the death of their parent; and a future estate depending on the contingency of the death of any person without heirs, or issue, or children shall be defeated by the birth of a posthumous child of such person. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1028.)

NOTES TO DECISIONS

Unborn children

"A child en ventre sa mère is deemed to be in esse for the purpose of taking a remainder, or any other estate or interest which is for his benefit, whether by descent, by devise, or under the statute of distribution." *Craig* v. *Rowland* (1897, 10 App. D.C. 402).

§ 45–205. Die without issue or without leaving issue refers to time of death.

In any deed or will of real or personal estate in the District of Columbia, executed after Mar. 3, 1901, the words "die without issue," or the words "die without leaving issue," or the words "have no issue," or other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear in the instrument. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 504.)

NOTES TO DECISIONS

Effective date of devise over

Under a devise to one person in fee and in case he should die under age and without issue to another in fee, the devise over takes effect upon the death at any time of the first devisee under age and without children. *Herrell* v. *Herrell* (1917, 47 App. D.C. 30).

Chapter 3.—FORMS—COVENANTS AND WARRANTIES

Sec.

45–301. Forms of instruments.
45–302. Deeds of corporations—Formal requisites—Acknowledgment.
45–303. Covenant binds covenantor and privies in favor of covenantee and privies without so stating.
45–304. General warranty.
45–305. Special warranty.
45–306. Covenant of quiet enjoyment.
45–307. Covenant against having encumbered land.
45–308. Covenant for further assurances.
45–309. Warranty by life tenant void as to heir

§ 45–301. Forms of instruments.

The following forms or forms to the like effect shall be sufficient, and any covenant, limitation, restriction, or proviso allowed by law may be added, annexed to, or introduced in the said forms. Any other form conforming to the rules herein laid down shall be sufficient:

FEE SIMPLE DEED

This deed, made this ——— day of ———, in the year ———, by me, ———, of ———, witnesseth, that in consideration of (here insert consideration), I, the said ———, do grant unto (here insert grantee's name), of ———, all that (here describe the property).

Witness my hand and seal. ——— ———. [Seal.]

DEED BY HUSBAND AND WIFE

This deed, made this ——— day of ———, in the year ———, by us, ——— and ———, his wife, of ———, witnesseth, that in consideration of ———, we, the said ——— and his wife, do grant unto ———, or ———, and so forth.

Witness our hands and seals. ——— ———. [Seal.]
——— ———. [Seal.]

DEED OF LIFE ESTATE

This deed, made this ——— day of ———, in the year ———, by me, ———, of ———, witnesseth, that in consideration of ———, I, the said ———, do grant unto ———, of ———, all that (here describe the property), to hold during his life and no longer.

Witness my hand and seal. ——— ———. [Seal.]

DEED OF TRUST TO SECURE DEBTS, SURETIES, OR FOR OTHER PURPOSES

This deed, made this ——— day of ———, in the year ———, by me, ———, of ———, witnesseth, that whereas (here insert the consideration for the deed), I, the said ———, do grant unto ———, of ———, as trustee the following property (here describe it) in trust for the following purposes (here insert the trusts and any covenant that may be agreed upon).

Witness my hand and seal. ——— ———. [Seal.]

FORM OF TRUSTEE'S DEED UNDER A DECREE

This deed, made this ——— day of ———, in the year ———, by me, ———, trustee, of ———, witnesseth: Whereas by a decree of (here insert court) passed on the ——— day of ———, in the cause of ——— versus ———, I, the said ———, was appointed trustee to sell the land decreed to be sold, and have sold the same to ———; and said sale has been ratified by said court. and said ——— has fully paid the purchase money due on said sale; now, therefore, in consideration of the premises, I, the said ———, do grant unto ———, of ———, all the right and title of all the parties to the aforesaid cause, in and to all that (here describe property).

Witness my hand and seal. ——— ———. [Seal.]

EXECUTOR'S DEED

This deed, made this ——— day of ———, in the year ———, witnesseth, that I, ———, of ———, executor of the last will of ———, late of ———, deceased, under a power in said will contained, in consideration of ———, have sold and do hereby grant to ———, of ———, all that (here describe the property).

Witness my hand and seal. ——— ———. [Seal.]

FORM OF MORTGAGE, WITH OR WITHOUT POWER OF SALE

This mortgage, made this ——— day of ———, in the year ———, witnesseth that whereas I, ——— of ———, am indebted unto ———, of ———, in the sum of ———, payable ———, for which I have given to said ——— my (here describe obligation). Now, in consideration thereof, I hereby grant unto the said ——— all that (here describe property), provided that if I shall punctually pay said (notes or other instruments) according to the tenor thereof then this mortgage shall be void. And if I shall make default in such payment the said ——— is hereby authorized and empowered to sell said property at public auction on the following terms (here insert them), and out of the proceeds of sale to retain whatever shall remain unpaid of my said indebtedness and the costs of such sale, and the surplus, if any, to pay to me.

Given under my hand and seal.

——— ———. [Seal.]

FORM OF LEASE

This lease, made this ——— of ———, in the year ———, between ——— of ——— and ———, of ———, witnesseth that the said ——— doth lease unto the said ———, his executor, administrator, and assigns, all that (here describe the property) for the term of ——— years, beginning on the ——— day of ———, in the year ———, and ending on the ——— day of ———, in the year ———, the said ——— paying therefor the sum of ——— on the ——— day of ——— in each and every year (or month, as the case may be).

Witness our hands and seals.

——— ———. [Seal.]
——— ———. [Seal.]

(Mar. 3, 1901, 31 Stat. 1277, ch. 854, ch. 16, subch. 5; June 30, 1902, 32 Stat. 533, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, in the Deed of Life Estate form, substituted "Deed of Life Estate" for "Deed of Live Estate", and "(here describe the property" for "and so

forth"; in the Deed of Trust to Secure Debts, Securities, or for Other Purposes form, substituted "of ____, as trustee" for "as trustee of ____,"; in the Executor's Deed form, substituted "(here describe the property)" for "and so forth"; and in the Form of Mortgage With or Without Power of Sale, substituted "for which I have given to said ____ my (here describe obligation)" "for which I have given to said ____ my promissory notes or bonds, or other instruments (here describe)."

CROSS REFERENCES

Release of dower, see § 30–216.

Sales and conveyances of public property, see §§ 1–214, 9–301 et seq.

§ 45–302. Deeds of corporations—Formal requisites—Acknowledgment.

The deed of a corporation shall be executed by having the seal of the corporation attached and being signed with the name of the corporation, by its president or other officer, and shall be acknowledged as the deed of the corporation by an attorney appointed for that purpose, by a power of attorney embodied in the deed or by one separate therefrom, under the corporate seal, to be annexed to and recorded with the deed. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 497; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, substituted "other officer" for "chief officer."

NOTES TO DECISIONS

Power of attorney

Deed of corporation, signed by vice president with power of attorney to act for the corporation, held valid. *Eggleston* v. *Wayland* (1926, 10 F. 2d 642, 56 App. D.C. 77).

Seal of corporation

Lease containing seal of corporation and signed by its vice president, held valid though not acknowledged. *Munsey Trust Co.* v. *Alexander* (1930, 42 F. 2d 604, 59 App. D.C. 369).

§ 45–303. Covenant binds covenantor and privies in favor of covenantee and privies without so stating.

When, in any deed, the word "covenant" is used, such word shall have the same effect as if the covenant was expressed to be by the covenantor, for himself, his heirs, devisees, and personal representatives, and shall be deemed to be with the grantee or lessee, his heirs, devisees, personal representatives, and assigns. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 505; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, substituted "When, in any deed, the word 'convenant' is used, such word" for "When, in a deed conveying real estate, the words 'the said ____ covenants' are used, such words."

NOTES TO DECISIONS

Subsequent owners

Similar restrictive covenants contained in deeds from the owner of a subdivision to all purchasers, inure to the benefit of the several purchasers and subsequent owners thereof. *McNeil* v. *Gary* (1913, 40 App. D.C. 397).

§ 45–304. General warranty.

A covenant by the grantor, in a deed conveying real estate, "that he will warrant generally the property hereby conveyed," or a grant of real estate in which the granting words are followed by the words "with general warranty," shall have the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives will warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns against the claims and demands of all persons whomsoever. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 506.)

§ 45–305. Special warranty.

A covenant by a grantor, in a deed conveying real estate, "that he will warrant specially the property hereby conveyed," or a grant of real estate in which the granting words are followed by the words "with special warranty," shall have the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives will forever warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns against the claims and demands of the grantor and all persons claiming or to claim by, through, or under him. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 507.)

NOTES TO DECISIONS

Trust deed covenants

Where grantor executing trust deeds creating junior liens warranted the property against persons claiming through her and covenanted to execute any necessary further assurances, the effect of the covenants in the trust deeds creating the junior liens was limited by their terms and by the fact that the grantor possessed and intended to convey only an equity of redemption from prior trusts. *Thompson* v. *Lawson* (1942, 132 F. 2d 21, 77 U.S. App. D. C. 31, certiorari denied 63 S. Ct. 1177, 319 U. S. 759, 87 L. Ed. 1711).

Waiver

A lessor may waive the breach of a specific covenant by delay in enforcement, or by subsequent acceptance of rent. *Klein* v. *Longo* (D. C. Mun. App. 1944, 34 A. 2d 359).

§ 45–306. Covenant of quiet enjoyment.

A covenant by the grantor, in a deed of land, "that the said grantee shall quietly enjoy said land," shall have the same effect as if he had covenanted that the said grantee, his heirs, and assigns, shall, at any and all times after Mar. 3, 1901, peaceably and quietly enter upon, have, hold, and enjoy the land conveyed by the deed or intended to be so conveyed, with all the rights, privileges, and appurtenances thereunto belonging, and to receive the rents and profits thereof, to and for his and their use and benefit, without any eviction, interruption, suit, claim, or demand whatsoever by the said grantor, his heirs or assigns, or any other person or persons whatever. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 508.)

NOTES TO DECISIONS

Commercial use

Where landowner, as lessor, entered into a contract of lease for restaurant purposes, he impliedly warranted title and quiet possession, and, in such circumstances, it was not incumbent upon lessee to search lessor's title to determine if there was a covenant in lessor's deed against commercial use but lessee was entitled to rely upon the warranty. *Schwartz* v. *Westbrook* (1946, 154 F. 2d 854, 81 U.S. App. D.C. 64, 165 A.L.R. 1175).

§ 45–307. Covenant against having encumbered land.

A covenant by a grantor, in a deed of land, "that he has done no act to encumber said land," shall be construed to have the same effect as if he had covenanted that he had not done or executed or knowingly suffered any act, deed, or thing whereby the land and premises conveyed, or intended so to be,

or any part thereof, are or will be charged, affected or encumbered in title, estate, or otherwise. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 509.)

§ 45–308. Covenant for further assurances.

A covenant by a grantor, in a deed of land, "that he will execute such further assurances of said land as may be requisite," shall have the same effect as if he had covenanted that he, his heirs or devisees, will, at any time, upon any reasonable request, at the charge of the grantee, his heirs or assigns, do, execute, or cause to be done and executed, all such further acts, deeds, and things, for the better, more perfectly and absolutely conveying and assuring the lands and premises conveyed unto the grantee, his heirs and assigns, as intended to be conveyed, as by the grantee, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised, or required. (Mar. 3, 1901, 31 Stat. 1269 ch. 854, § 510.)

§ 45–309. Warranty by life tenant void as to heir.

All warranties which shall be made by any tenant for life, of any lands, tenements or hereditaments, the same descending or coming to any person in reversion or remainder, shall be void and of none effect, and likewise all collateral warranties, of any lands, tenements or hereditaments, by any ancestor, who has no estate of inheritance in possession in the same shall be void against the heir. (4 Ann, ch. 16, § 21, 1705; Kilty Rep., 246; Alex. Br. Stat. 662; Comp. Stat., D. C., 496, § 33.)

Chapter 4.—ACKNOWLEDGMENTS

Sec.
45–401. Acknowledgment by attorney.
45–402. Acknowledgment in the District.
45–403. Acknowledgment out of District.
45–404. Acknowledgment in foreign country.
45–405. Acknowledgments in Guam, Samoa, and Canal Zone.
45–406. Acknowledgments in Philippine Islands and Puerto Rico.
45–407. Certain irregular acknowledgments validated.
45–408. Certain defective acknowledgments and executions validated.
45–409. Acknowledgments by married women.
45–410. Power of attorney by married woman.
45–411. Absence of acknowledgment.
45–412. Acts of Congress and law of Maryland cumulative as to deeds prior to January 1, 1902.

§ 45–401. Acknowledgment by attorney.

No deeds of conveyance of either real or personal estate by individuals shall be executed or acknowledged by attorney. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 498.)

NOTES TO DECISIONS

Entry into possession

A lease for more than one year will be valid when the tenant enters into possession and expends large sums of money, notwithstanding the invalidity of the lease under the provision of this section that no deed may be executed by attorney. *Kresge* v. *Crowley* (1917, 47 App. D.C. 13).

Power of attorney

When power of attorney was given by two persons jointly to acknowledge deed for the grantor, which power was executed by one of them only, such defective acknowledgment was corrected by acts of Congress April 20, 1838, and March 3, 1865. *Hevner* v. *Matthews* (1894, 4 App. D.C. 380).

Power of attorney to sell and convey land of married woman and husband and acknowledged by them was valid both by statute and common law. The Civil War did not revoke such power although principals resided in insurrectionary States. *Williams* v. *Paine* (1895, 7 App. D.C. 116, affirmed 18 S. Ct. 279, 169 U.S. 55, 42 L. Ed. 658).

§ 45–402. Acknowledgment in the District.

Acknowledgment of deeds may be made in the District of Columbia before any judge of any of the courts of said District, the clerk of the United States District Court for the District of Columbia, or any notary public, or the recorder of deeds of said District, and the certificate of the officer taking the acknowledgment shall be to the following effect:

I, A B, a notary public (or other officer authorized) in and for the District of Columbia, do hereby certify that C D, party to a certain deed bearing date on the _____ day of _____, and hereto annexed, personally appeared before me in said District, the said C D being personally well known to me as (or proved by the oath of credible witnesses to be) the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this ____ day of _____.

A. B. [Seal.]

(Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 493; June 30, 1902, 32 Stat. 531, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1902—Act June 30, 1902, struck out "such acknowledgment" and inserted in lieu thereof "acknowledgment of deeds."

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

NOTES TO DECISIONS

Evidence to impeach

The evidence to impeach the acknowledgment to a deed for fraud must be clear and convincing. *Ford* v. *Ford* (1906, 27 App. D.C. 401).

Omission of words

Whether an acknowledgment is sufficient if the words "do hereby certify" as recited in the statute, are omitted, see *Ohio Nat. Bank* v. *Berlin* (1905, 26 App. D.C. 218).

A deed is fatally defective which omits to state that the grantor was personally known to the officer or that his identity had been proved by the oath of credible witnesses, and which fails to identify the instrument by recital of its date. The recordation of an instrument so acknowledged is erroneous and of no effect as constructive notice. *Id.*

Prima facie proof

"The true view is that the certificate of acknowledgment is prima facie proof of the facts it contains, if within the officers' range, but is open to rebuttal, between the parties, by proof of gross concurrent mistake or fraud. In favor of purchasers for valuable consideration without notice, it is conclusive as to all matters which it is the duty of the acknowledging officer to certify, if he has jurisdiction. As to all other persons it is open to dispute." *Ford* v. *Ford* (1906, 27 App. D.C. 401).

§ 45–403. Acknowledgment out of District.

When any deed or contract under seal is to be acknowledged out of the District of Columbia, but within the United States, the acknowledgment may be made before any judge of a court of record and of law, or any chancellor of a State, any judge or justice of the Supreme, District, or Territorial courts of the United States, any justice of the peace or notary

public: *Provided,* That the certificate of acknowledgment aforesaid, made by any officer of the State or Territory not having a seal, shall be accompanied by the certificate of the register, clerk, or other public officer that the officer taking said acknowledgment was in fact the officer he professed to be. (Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 495; June 30, 1902, 32 Stat. 531, ch. 1329; Mar. 3, 1911, 36 Stat. 1167, ch. 231, §§ 289, 291.)

AMENDMENTS

1911—Act Mar. 3, 1911, "circuit" after "Supreme."

1902—Act June 30, 1902, "relating to land" after "seal" and a proviso which stated "that a certificate by any such register, clerk, or other public officer, in the form prescribed by the laws of the State or Territory in which such certificate is made or customarily used therein, shall be a sufficient certificate for the purposes of this section."

§ 45–404. Acknowledgment in foreign country.

Deeds made in a foreign country may be acknowledged before any judge or notary public, or before any secretary of legation or consular officer, or acting consular officer of the United States, as such consular officer is described in section 51 of title 22, U.S. Code; and when the acknowledgment is made before any other officer than a secretary of legation or consular officer or acting consular officer of the United States, the official character of the person taking the acknowledgment shall be certified in the manner prescribed in section 45–403. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 496; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, changed the reference from section 1674 of the Revised Statutes to 22 U.S.C. § 51.

§ 45–405. Acknowledgments in Guam, Samoa, and Canal Zone.

Deeds and other instruments affecting land situate in the District of Columbia may be acknowledged in the islands of Guam and Samoa or in the Canal Zone before any notary public or judge, appointed therein by proper authority, or by any officer therein who has ex officio the powers of a notary public: *Provided,* That the certificate by such notary in Guam, Samoa, or the Canal Zone, as the case may be, shall be accompanied by the certificate of the governor or acting governor of such place to the effect that the notary taking said acknowledgment was in fact the officer he purported to be; and any deeds or other instruments affecting lands so situate, so acknowledged since the 1st day of January, 1905, and accompanied by such certificate shall have the same effect as such deeds or other instruments hereafter so acknowledged and certified. (June 28, 1906, 34 Stat. 552, ch. 3585.)

CODIFICATION

Section is also classified to 48 U.S.C. § 1663.

§ 45–406. Acknowledgments in Philippine Islands and Puerto Rico.

Deeds and other instruments affecting land situate in the District of Columbia may be acknowledged in the Philippine Islands and Puerto Rico before any notary public appointed therein by proper authority, or any officer therein who has ex officio the powers of a notary public: *Provided,* That the certificate by such notary in the Philippine Islands or in Puerto Rico, as the case may be, shall be accompanied by the certificate of the executive secretary of Puerto Rico, or the governor or Attorney-General of the Philippine Islands to the effect that the notary taking said acknowledgment was in fact the officer he purported to be. (Mar. 22, 1902, 32 Stat. 88, ch. 273; Mar. 2, 1917, 39 Stat. 968, ch. 145, § 54; May 17, 1932, 47 Stat. 158, ch. 190.)

CODIFICATION

Section is also classified to 48 U.S.C. § 742.

AMENDMENT

1902—Act Mar. 2, 1917, deleted "or any territory of the United States" after "Columbia" and substituted "executive-secretary of Porto Rico" for "Attorney General of Porto Rico."

CHANGE OF NAME

The name of "Porto Rico" was changed to "Puerto Rico" by act May 17, 1932.

§ 45–407. Certain irregular acknowledgments validated.

All acknowledgments of deeds and other instruments of writing under seal made prior to March 3, 1879, in a foreign country, before any secretary of legation, consul, or consular officer of the United States, for lands lying in the District of Columbia, are hereby validated and confirmed, and the same, and the records of the said deeds and instruments, if the said deeds and instruments have been recorded, are declared to be as good and effectual, in behalf of the grantees therein named, and all persons claiming through or under them, as if the said acknowledgments and records had been respectively made and recorded under the provisions of existing laws: *Provided,* That nothing in this section shall be construed to divest just rights already acquired in good faith by creditors of or purchasers from the grantors in such deeds or instruments. (Mar. 3, 1879, 20 Stat. 353, ch. 174.)

§ 45–408. Certain defective acknowledgments and executions validated.

All deeds and acknowledgments recorded in the land records of the District prior to January 1, 1902, of any of the following designated classes shall, in favor of parties in actual possession, claiming under and through such deeds, be deemed and held and are declared to be of the same effect and validity to pass the fee simple or other estate intended to be conveyed, and bar dower in the real estate therein mentioned, as if such deeds had in all respects been executed, acknowledged, proved, certified, and recorded according to law, namely:

First. All deeds executed and acknowledged by married women, their husbands having signed and sealed the same, for conveying any real estate, or interest therein, situated in the District;

Second. All acknowledgments of deeds by married women, whether they executed the deed or not, for the purpose of releasing their claims to dower in the lands described therein, situated in the District, in which acknowledgments the form prescribed by law was not followed;

Third. All deeds executed and acknowledged by an attorney in fact duly appointed for conveying real estate situated in the District;

Fourth. All deeds executed and acknowledged, or only acknowledged by such attorney in fact, for con-

veying real estate situated in the District, as to which the acknowledgment was made before officers different from those before whom proof of the power of attorney was made, and as to which the power of attorney was proved before only one justice of the peace;

Fifth. All deeds for the purpose of conveying land situated in the District, acknowledged out of the District, before a judge of a United State court, or before two aldermen of a city, or the chief magistrate of a city, or before a notary public or other officer;

Sixth. All deeds for the purpose of conveying land situated in the District, acknowledged by an attorney in fact, duly appointed, or by an officer of a corporation, duly authorized, who acknowledged the same to be his act and deed, instead of the act and deed of the grantor or of the corporation; and

Seventh. All deeds for the purpose of conveying land situated in the District to which there was not annexed a legal certificate as to the official character of the officer or officers taking the acknowledgment. (R. S., D. C., § 459; Mar. 3, 1901, 31 Stat. 1270, ch. 854, § 515; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, added at the end of the paragraph numbered "Fifth" the words "or other officer."

NOTES TO DECISIONS

Prior law

Under laws of Maryland, in force in the District of Columbia in 1859, it was competent for a married woman to execute with her husband a power of attorney to convey her lands therein, which, when acknowledged by her according to this section relating to the acknowledgment by married women of deeds conveying their real property in the District, thereby became a valid and sufficient instrument to authorize the conveyance by attorney. *Williams* v. *Paine* (1898, 18 S. Ct. 279, 169 U.S. 55, 42 L. Ed. 658).

§ 45–409. Acknowledgments by married women.

In all cases mentioned in section 45–408 the certificate of acknowledgment by a married woman made prior to April 10, 1869, must show that the acknowledgment was made "apart" or "privily" from her husband, or use some other term importing that her acknowledgment was made out of his presence, and also that she acknowledged or declared that she willingly executed or that she willingly acknowledged the deed, or that the same was her voluntary act, or to that effect. (R. S., D. C., § 460; Mar. 3, 1901, 31 Stat. 1270, ch. 854, § 516; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, inserted after the word "woman," the words "made prior to April 10, 1869."

§ 45–410. Power of attorney by married woman.

When the power of attorney mentioned in section 45–408 was executed by a married women, the same shall be effectual and sufficient if there is such an acknowledgment of the same as would be sufficient, under the provisions of section 45–409 to pass her estate and interest therein were she a party executing the deed of conveyance. (Mar. 3, 1901, 31 Stat. 1270, ch. 854, § 518; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, substituted "section 45–408 was" for "section 45–408 is", and "section 45–409" for "this chapter."

§ 45–411. Absence of acknowledgment.

No deed or conveyance of squares or lots of public land in the city of Washington, made in pursuance of law prior to January 1, 1902, by the commissioner of public buildings or any other authorized officer, shall be deemed invalid in law for the want of an acknowledgment by the commissioner or other authorized officer before such judicial officers, as deeds of real property made between individuals are required by law to be acknowledged. (Mar. 3, 1901, 31 Stat. 1269, ch. 854, § 514; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, changed the date from Mar. 3, 1863, to January 1, 1902.

§ 45–412. Acts of Congress and law of Maryland cumulative as to deeds prior to January 1, 1902.

In all cases of deeds executed and acknowledged prior to January 1, 1902, the Acts of Congress approved May 31, 1832 (4 Stat. 520, ch. 112), and April 20, 1838 (5 Stat. 226, ch. 57), in reference to the acknowledgment and recording of deeds of lands situated in the District, shall be taken and construed as cumulative with the Acts of Maryland on the same subject in force in the District at the passage thereof, and an acknowledgment made and certified in compliance with any one of said Acts, and before any officer authorized by either of said Acts to take an acknowledgment, whether in or out of the District, shall be good and effectual. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 520; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, added "In all cases of deeds executed and acknowledged prior to January 1, 1902,"

Chapter 5.—EFFECTIVE DATE AND RECORDING OF DEEDS

Sec.
45–501. When deeds take effect.
45–502. Deed first recorded has priority.
45–503. Instruments not executed or acknowledged according to law not to be recorded.
45–504. Record of deeds as evidence.
45–505. Bonds and contracts.
45–506. Maps and plats not to be recorded.

§ 45–501. When deeds take effect.

Any deed conveying real property in the District, or interest therein, or declaring or limiting any use or trust thereof, executed and acknowledged and certified as provided in sections 30–216, 45–106, 45–302, 45–401 to 45–404 and delivered to the person in whose favor the same is executed, shall be held to take effect from the date of the delivery thereof, except that as to creditors and subsequent bona fide purchasers and mortgagees without notice of said deed, and others interested in said property, it shall only take effect from the time of its delivery to the recorder of deeds for record. (Apr. 29, 1878, 20 Stat. 39, ch. 69; Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 499; June 30, 1902, 32 Stat. 531, ch. 1329.)

CODIFICATION

In the fourth line, the 1901 code said "provided as aforesaid." The sections thereof that preceded this section were §§ 492–498 which are compiled herein as §§ 30–216, 45–106, 45–302, and 45–401 to 45–404.

AMENDMENT

1902—Act June 30, 1902, deleted after the word "effect" the words "and pass the title in the property conveyed to said person from the date of the acknowledgment, provided the same be recorded within three months from said date."

CROSS REFERENCE

Criminal penalty for recording instrument by one who has no color of title, see § 22–1302.

NOTES TO DECISIONS

Assignment of rents

An assignment of rents is not a transfer of an estate in the land, for the owner may transfer the rents and still retain his entire interests in the land. *Commercial Credit Co.* v. *Campbell* (1935, 74 F. 2d 468, 64 App. D.C. 64).

Constructive trust

Where vendor conveyed property and purchaser recorded deed but did not prepare and record trust instrument as agreed and thereafter creditors of purchaser obtained judgments against him becoming liens on the real estate, if facts disclosed a constructive trust inherently incapable of recording and no laches by vendor, vendor's constructive trust would have priority over judgment creditors, but if creditors were able to show affirmative reliance on state of record, without notice of any infirmity, they would be entitled to the same standing, as bona fide purchasers. *Osin* v. *Johnson et al.* (1957, 243 F. 2d 653, 100 U. S. App. D. C. 230).

"Creditors," construed

"Creditors mentioned (in this section) mean creditors who in the interval of time have fastened upon the property for the payment of their debts, and not general creditors." *Crosby* v. *Ridout* (1906, 27 App. D.C. 481).

Creditors having actual notice

The delivery of a deed for record is not a prerequisite to its validity as against creditors having actual notice of its existence. *Staples* v. *Warren* (1917, 46 App. D.C. 363),

Deed withheld from record

When deed of trust was not recorded until several weeks after the judgment of the bank was recovered, and there was no evidence that the bank ever had actual notice of its existence until after execution was issued and levied, the conveyance would be ineffectual against the bank, or any purchaser at the sale under that judgment. *Hitz* v. *National Metropolitan Bank* (1885, 4 S. Ct. 613, 111 U.S. 722, 28 L. Ed. 577).

"The fact that a deed once delivered is withheld from record for a long period or until the death of the grantor, either at or without the request of the latter, has no effect to impair its effect as a conveyance of title or to operate any extinguishment." *Walker* v. *Warner* (1908, 31 App. D.C. 76). See, also, *Fitzgerald* v. *Wynne* (1893, 1 App. D.C. 107); *Bunten* v. *American Security & Trust Co.* (1905, 25 App. D.C. 226).

Delivery essential; object of acknowledgment

"The act of delivery is essential to the existence of any deed, bond, or note. Although drawn and signed, so long as it is undelivered, it is a nullity; not only does it take effect only by delivery, but also only on delivery." *Atlas Portland Cement Co.* v. *Fox* (1920, 265 F. 444, 49 App. D.C. 292).

'The great object of the statutes in requiring deeds of conveyance to be acknowledged and recorded is to prevent the practice of fraud upon creditors and purchasers—to furnish the means of notice and protection to innocent third parties.' To prevent fraud and furnish notice when? At the time the credit is extended or the claim reduced to judgment, on the strength of the debtor's apparent title. Not before the title was acquired, but during its record existence." *Fitzgerald* v. *Wynne* (1893, 1 App. D.C. 107).

A deed conveying real property or any interest therein, or declaring or limiting any use or trust thereof, cannot take effect without delivery to the person in whose favor it is executed. *Schooler* v. *Schooler* (1949, 173 F. 2d 299, 84 U.S. App. D.C. 147).

General intent of registry

General intent of the statutes of registry is to protect innocent persons against prejudice from secret conveyances, by providing means through which they can know the condition of titles; that where they acquire such knowledge by means other than registry, they do not stand in need of such protection, and do not, as a general rule, come within the purview of the statutes; and that the statutes will be so construed unless their terms exclude such construction. *Manogue* v. *Bryant* (1899, 15 App. D.C. 245).

Illegal recording

"The record of an instrument that is not permitted by law to be recorded, or that is not proved for record as required by law, is constructive notice to no one." *Clark* v. *Harmer* (1895, 5 App. D.C. 114).

Where trustees released deed of trust securing note held by bank, recording of release did not give such "constructive notice" to bank or its receiver as would start running of limitations against action to recover damages from the trustees individually for alleged wrongful release. *Young* v. *Howard,* (1941, 120 F. 2d 712, 73 App. D.C. 340).

Judgment creditors

"Judgment creditors" are within meaning of the statute, but this applies only to cases where the credit has been extended or judgments have been secured while the record title remained in the debtor. *Atlas Portland Cement* v. *Fox* (1920, 265 F. 444, 49 App. D.C. 292).

Judgment liens

Judgment liens extend to all lands "held under apparently perfect legal title by the judgment debtor at the time of the rendition of the judgment, notwithstanding the same might be subject to some secret trust, capable of being placed upon record." *American Sav. Bank* v. *Eisminger* (1910, 35 App. D.C. 51).

Notice—Not required

"One is not required to take notice of everything which is put upon the records of the Land Office, even concerning his own property. One who has acquired title is entitled to rest upon his rights; nothing afterwards put upon record, otherwise than by himself or his procurement, can legally affect those rights." *Armstrong* v. *Ashley* (1903, 22 App. D.C. 368, affirmed 27 S. Ct. 270, 204 U.S. 272, 51 L. Ed. 482).

—— Prior equity

"A purchaser with notice of a prior equity superior to the rights of his grantor takes his place and is bound to do that which in equity his grantor was bound to do." *Kresge* v. *Crowley* (1917, 47 App. D.C. 13).

—— Required

"One who deals with land is required to take notice of all conveyances on record at the time at which he deals with it." *Armstrong* v. *Ashley* (1903, 22 App. D.C. 368, affirmed 27 S. Ct. 270, 204 U.S. 272, 51 L. Ed. 482). See, also, *Sis* v. *Boarman* (1897, 11 App. D.C. 116).

Particular form not required

"No particular form or ceremony is essential to the effective delivery of a deed. Words or acts showing an intention that the deed shall be complete and operative constitute a good delivery." *Walker* v. *Warner* (1908, 31 App. D.C. 76).

Passage of title

Under District of Columbia law, a deed conveying real property takes effect from the date of the delivery thereof, except that as to creditors, subsequent bona fide purchasers, mortgagees without notice of the deed, and others interested in said property, the deed takes effect from the time of delivery to the recorder of deeds for record. *Owens* v. *Liff* (D. C. Mun. App. 1949, 65 A. 2d 921).

A deed conveying real property takes effect from the date of the delivery thereof and, except as to the statutory limitations, it shall take effect only from the time of its delivery to the recorder of deeds for record. *Glennon* v. *Butler* (D. C. Mun. App. 1949, 66 A. 2d 519).

Possession prima facie evidence

Possession by the grantee is prima facie evidence of delivery. *Walker* v. *Warner* (1908, 31 App. D.C. 76), see also, *Carusi* v. *Savary* (1895, 6 App. D.C. 330).

Priority of judgment creditor

A judgment creditor who files a bill in equity to sell the equitable interest of the judgment debtor in real property, has priority over a grantee claiming under a deed executed before (but not filed for record until after) the filing of the bill. *Ohio Nat. Bank* v. *Berlin* (1905, 26 App. D.C. 218).

Recording as to third parties

"The requirement consists in the duty imposed upon the grantee to record, or suffer the penalty prescribed * * * of having the instrument * * * declared a nullity. * * * Though optional with the grantee as to certain parties as to innocent purchasers and creditors it is required for his protection." *Dulany* v. *Morse* (1913, 39 App. D.C. 523).

Recording of trust deed from stranger

Recordation of deed of trust from a stranger to the record title is not constructive notice that the grantor is the grantee of last record owner. *Crosby* v. *Ridout* (1906, 27 App. D.C. 481).

Superior equities of prior specific lien

"A judgment, being but a general lien, must be subordinated to the superior equities of a prior specific lien * * *. The judgment creditor stands in the place of his debtor, and can only take the property of his debtor subject to the equitable charges to which it was justly liable in the hands of the debtor at the time of the rendition of the judgment." *Crosby* v. *Ridout* (1906, 27 App. D.C. 481).

Superseding prior act

This section superseded prior recording act and applies to all instruments unrecorded at time of its passage. *Dulany* v. *Morse* (1913, 39 App. D.C. 523).

Trustee in bankruptcy

Trustee in bankruptcy does not, under our recording statutes, take the property as an innocent purchaser, but "subject to all equities, liens, or encumbrances, whether created by operation of law or by the bankrupt, which existed against the property in the hands of the bankrupt." *Crosby* v. *Ridout* (1906, 27 App. D.C. 481).

Unexpressed condition

"A deed cannot be delivered to the grantee upon a condition not expressed in the instrument." *Walker* v. *Warner* (1908, 31 App. D.C. 76). See, also, *Newman* v. *Baker* (1897, 10 App. D.C. 187); *Bieber* v. *Gans* (1905, 24 App. D.C. 517).

Unrecorded prior lien

Where vendor conveyed property and purchaser without disclosing the vendor's prior unrecorded lien against his title, borrowed money from defendant executing deeds of trust against the property, fraud in relationship between the vendor and the purchaser did not give vendor a claim superior to that of the trust holders, who occupied the position of bona fide purchasers. *Osin* v. *Johnson et al.* (1957, 243 F. 2d 653, 100 U. S. App. D. C. 230).

§ 45–502. Deed first recorded has priority.

When two or more deeds of the same property are made to bona fide purchasers for value without notice, the deed or deeds which are first recorded according to law shall be preferred. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 500.)

§ 45–503. Instruments not executed or acknowledged according to law not to be recorded.

The recorder shall not accept for record or record any instrument which shall not be executed and acknowledged agreeably to law by the person or party therein granting or contracting with respect to his right, title, or interest in the land therein described. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 555; June 30, 1902, 32 Stat. 533, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, "and the knowledge by any person of the fact of such record shall not be either constructive or actual notice of the existence of such instrument", following "land therein described."

NOTES TO DECISIONS

Illegal recording

"The record of an instrument that is not permitted by law to be recorded, or that is not proved for record as required by law, is constructive notice to no one." *Clark* v. *Harmer* (1895, 5 App. D.C. 114).

Instruments to be recorded

"He is by law required to receive and file, or receive and record * * * such instruments as have been duly executed, and which purport on their face to be of the nature of instruments entitled to be filed or recorded." *Dancy* v. *Clark* (1905, 24 App. D.C. 487).

Mandamus to compel recordation

Use of mandamus to compel recordation. *Dancy* v. *Clark* (1905, 24 App. D.C. 487).

Validity of instruments

Recorder has no jurisdiction to pass on validity of instruments presented for record. *Dancy* v. *Clark* (1905, 24 App. D.C. 487).

§ 45–504. Record of deeds as evidence.

The record or a copy thereof of any deed recorded, as mentioned in sections 45–408 and 45–409, shall be evidence thereof, in the same manner and shall have the same effect as if such deed had been originally executed, acknowledged, and recorded according to law. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 519; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, substituted "the record or a copy" for "the record and a copy."

CROSS REFERENCE

Introduction into evidence, see §§ 14–501, 14–502.

§ 45–505. Bonds and contracts.

Any title bond or other written contract in relation to land may be acknowledged, certified, and recorded in the same manner and with like effect as to notice as deeds for the conveyance of land. (Mar. 3, 1901, 31 Stat. 1268, ch. 854, § 501; June 30, 1902, 32 Stat. 531, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, "as deeds for the conveyance of land" which followed "manner."

§ 45–506. Maps and plats not to be recorded.

It shall not be lawful for any person or persons to record any map or plat of the subdivision of land in the District of Columbia in the office of the recorder of deeds for said District, whether such map or plat be attached to a deed or other document or is offered separately for record. (Aug. 24, 1894, 28 Stat. 501, ch. 329.)

CROSS REFERENCE

Maps and plats recorded in surveyor's office, see § 1–605 et seq.

Chapter 6.—MORTGAGES AND DEEDS OF TRUST

Sec.
45–601. Mortgages and deeds of trust executed, acknowledged, and recorded same as deeds.
45–602. How to be recorded.
45–603. Estate of mortgagee or trustee conveyed.
45–604. Survival of title.
45–605. In suit for money secured by mortgage or for ejectment, the money due may be paid into court and mortgagee required to release and discharge mortgage.

Sec.
45–606. In foreclosure suits court may upon motion by defendant, and admission of right of plaintiff, make a final decree without suit being brought to regular hearing.
45–607. Foreclosure—Exceptions to payment.
45–608. Infant trustee or mortgagee may convey on petition to court by mortgagor, beneficiary, or guardian.
45–609. Infant trustee or mortgagee may be compelled by order of court to make conveyance and assurance.
45–610. Mortgagee may redeem prior mortgage.
45–611. Appointment of trustee to sell in event of death of mortgagee or trustee.
45–612. Defenses against foreclosure.
45–613. Replacement of deceased trustee.
45–614. Appointment of new trustee to sell in event of refusal or inability to act or removal of trustee from District, or for other good cause—Appointment of new trustee by agreement of parties.
45–615. Terms of sale.
45–616. Sale of property and deficiency decree in personam—Same relief in re vendor's lien.
45–617. Creditor buying.
45–618. Expenses and commissions.
45–619. Release after death of mortgagee or trustee.
45–620. Non compos mentis trustee or mortgagee or committee may by order of the chancellor make conveyance or assurance of mortgaged lands.

§ 45–601. Mortgages and deeds of trust executed, acknowledged, and recorded same as deeds.

Mortgages and deeds of trust to secure debts, conveying any estate in land, shall be executed and may be acknowledged and recorded in the same manner as absolute deeds; and they shall take effect both as between the parties thereto and as to others, bona fide purchasers and mortgagees and creditors, in the same manner and under the same conditions as absolute deeds. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 521; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, substituted "shall be executed and may be acknowledged" for "in order to be effectual, shall be executed", and deleted "and pass title to the property conveyed" following "shall take effect."

CROSS REFERENCE

Statute of frauds, see §§ 28–3501, 28–3503.

NOTES TO DECISIONS

Generally

Deed declared a mortgage. *Dulany* v. *Morse* (1913, 39 App. D.C. 523).

Constructive trust

Where vendor conveyed property and purchaser recorded deed but did not prepare and record trust instrument as agreed and thereafter creditors of purchaser obtained judgments against him becoming liens on the real estate, if facts disclosed a constructive trust inherently incapable of recording and no laches by vendor, vendor's constructive trust would have priority over judgment creditors, but if creditors were able to show affirmative reliance on state of record, without notice of any infirmity, they would be entitled to the same standing, as bona fide purchasers. *Osin* v. *Johnson et al.* (1957, 243 F. 2d 653, 100 U. S. App. D. C. 230).

§ 45–602. How to be recorded.

It shall be the duty of the recorder of deeds to record all such mortgages and deeds of trust in the same manner as absolute deeds. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 523; June 30, 1902, 32 Stat. 532, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, deleted "and, after each mortgage, to leave a blank space wherein may be recorded any assignment or release of said mortgage" following "absolute deeds."

§ 45–603. Estate of mortgagee or trustee conveyed.

The legal estate conveyed to a mortgagee, his heirs and assigns, or to a trustee to secure a debt, his heirs and assigns, shall be construed and held to be a qualified fee simple, determinable upon the release of the mortgage or deed of trust, as hereinafter provided, or the appointment of a new trustee by agreement of the parties pursuant to section 45–614(b) or by judicial decree for the causes hereinafter mentioned: *Provided,* That nothing in this section contained shall prevent the passing of an absolute and unqualified estate in fee-simple under a deed made by the mortgagee, trustee, or new trustee in pursuance of the powers conferred by the mortgage or deed of trust. (Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 522; June 30, 1902, 32 Stat. 532, ch. 1329; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89–706, § 1(a).)

AMENDMENTS

1966—Act Nov. 2, 1966 inserted "by agreement of the parties pursuant to section 45–614(b) or" after "a new trustee" in provisions preceding the proviso; and, in proviso, substituted ", trustee, or new trustee" for "or trustee".

1902—Act June 30, 1902, added the proviso relating to the passing of an estate in fee simple.

EFFECTIVE DATE OF 1966 AMENDMENTS

Section 2 of act Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89–706, provided: "The amendments made by the first section of this Act [to §§ 45–603, 45–611, 45–614 and 45–619] shall apply to all deeds of trust, whether entered into before, on, or after the date of enactment of this Act [Nov. 2, 1966]."

CROSS REFERENCE

Removal of trustee, see § 45–614.

NOTES TO DECISIONS

Mortgagee out of possession

Mortgagee out of possession has no such interest as will permit him to have partition; "much less is the beneficiary under a deed of trust entitled to have partition; for he has no estate whatever, and no possibility even of a right of possession. Nor has the trustee in the deed any such right * * *." *Sis* v. *Boarman* (1897, 11 App. D.C. 116).

Powers and duties of trustees

Powers and duties of trustees in deeds of trust as to time of sale and price of property are more restricted than trustees for distribution and partition, and the duties of the first type of trustees are measured by the deed of trust. *Anderson* v. *White* (1894, 2 App. D.C. 408).

Powers and duties of trustees are measured by terms of instrument appointing them, and they do not have the same discretion in exercise of duties as other trustees. *Wheeler* v. *McBlair* (1895, 5 App. D.C. 375, affirmed 19 S. Ct. 882, 172 U.S. 643, 43 L. Ed. 1182).

Recovery of possession by mortgagee

Mortgagee and mortgagor do not stand in relation of landlord and tenant, and mortgagee, after default, may not recover possession under Landlord and Tenant Act of the District, but must bring ejectment or foreclosure. *Willis* v. *Eastern Trust & Banking Co.* (1898, 18 S. Ct. 347, 169 U.S. 295, 42 L. Ed. 752).

Sale of mortgaged realty

A proposed contract of sale of mortgaged realty, in good faith, and in which mortgagor will participate, does not violate this section. *Pearson* v. *Small* (1936, 82 F. 2d 849, 65 App. D.C. 243).

Sale under deed of trust

The exercise of a power of sale under a deed of trust by a trustee who is, or is associated with, the owner of the debt secured, is improper. *Canelacos* v. *Hollway* (1942, 123 F. 2d 934, 75 U.S. App. D.C. 58, 138 A.L.R. 1010).

A fair sale under deed of trust, to an innocent purchaser for value, should not be set aside because of a trustee's interest in the debt which has been disclosed to the debtor, since under such circumstances there is no good reason for disappointing the reasonable expectations of the purchaser. *Id.*

Where trustees did not conceal their interest in property from debtor executing deed of trust, sale under deed of trust was well advertised and was conducted by reputable auctioneers, debtor made no objection to sale until nearly five months after sale, but expressed approval to purchasers, innocent purchasers for value and strangers to the trustees were entitled to specific performance of their contract of purchase together with their actual damages, if any, but not punitive damages, and judgment requiring the purchasers to account for rents and profits, less certain compensation and expenses on theory that the sale was void, was erroneous. *Id.*

Trustee holds legal title

Trustee holds legal title and a deed by it conveyed whatever title it had. *Chesapeake Beach R. Co.* v. *Washington, P. & C. R. Co.* (1905, 26 S. Ct. 25, 199 U.S. 247, 50 L. Ed. 175).

"The estate of the trustee is a naked legal title without any beneficial interest whatever * * * and they have always held the legal title in strict subordination to the beneficial interest of the debtor and creditor in the transaction." *Marshall* v. *Kraak* (1904, 23 App. D.C. 129).

Trustees sales for partition or distribution

In making a sale the trustee must not place himself in a position where his personal interest conflicts with his duty. *Jackson* v. *Smith* (1919, 41 S. Ct. 200, 254 U.S. 586, 65 L. Ed. 418).

Difference between rule applicable to cases of sales by trustees for partition or distribution and sales under ordinary trust to secure loans and enforceable upon stipulated terms. In the former, interests of the beneficiaries are identical, and trustee is charged with absolute duty to arrange and conduct sale; in the latter it is duty of trustee to conduct sale in manner and upon notice prescribed in the trust. *Smith* v. *Jackson* (1919, 48 App. D.C. 565, reversed on other grounds 41 S. Ct. 200, 254 U.S. 586, 65 L. Ed. 418).

Sale by a trustee substituted for the survivor of two trustees, who refused to act, is valid, without there being a substitute for the deceased trustee. *Stokes* v. *Hinden* (1936, 85 F. 2d 200, 66 App. D.C. 34).

§ 45–604. Survival of title.

Whenever a mortgage or deed of trust to secure a debt is executed to two or more mortgagees or trustees in fee simple, upon the death of any one or more of them the legal title and the trust attached to it shall be held to survive to the survivor or survivors and the heirs of the last survivor, subject to the provisions aforesaid. (Mar. 3, 1901, 31 Stat. 1272, ch. 854, § 533.)

NOTES TO DECISIONS

Substituted trustee

The wording indicates no intention that a trustee should be substituted for each of the original Trustees, where there are more than one, but only for the surviving trustee. *Stokes* v. *Hinden* (1936, 85 F. 2d 200, 66 App. D.C. 34).

§ 45–605. In suit for money secured by mortgage or for ejectment, the money due may be paid into court and mortgagee required to release and discharge mortgage.

Where any action shall be brought on any bond for payment of the money secured by mortgage, or performance of the covenants therein contained, or where any action of ejectment shall be brought in any court of record by any mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns, for the recovery of the possession of any mortgaged lands, tenements, or hereditaments, and no suit shall be then depending in any court of equity, for or touching the foreclosure or redeeming of such mortgaged lands, tenements, or hereditaments; if the person or persons having right to redeem such mortgaged lands, tenements, or hereditaments, and who shall appear and become defendant or defendants in such action, shall at any time, pending such action, pay unto such mortgagee or mortgagees, or, in case of his, her, or their refusal, shall bring into court where such action shall be depending, all the principal monies and interest due on such mortgage, and also all such costs as have been expended in any suit or suits at law or in equity upon such mortgage (such money for principal, interest, and costs to be ascertained and computed by the court where such action is or shall be depending, or by the proper officer by such court to be appointed for that purpose) the monies so paid to such mortgagee or mortgagees, or brought into such court, shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the court shall and may discharge every such mortgagor, or defendant, of and from the same accordingly; and shall and may, by rule or rules of the same court, compel such mortgagee or mortgagees, at the costs and charges of such mortgagor or mortgagors, to assign, surrender, or reconvey such mortgaged lands, tenements, and hereditaments, and such estate and interest, as such mortgagee or mortgagees have or hath therein, and deliver up all deeds, evidences, and writings, in his, her, or their custody, relating to the title of such mortgaged lands, tenements, and hereditaments, unto such mortgagor or mortgagors, who shall have paid or brought such monies into the court, his, her, or their heirs, executors, or administrators, or to such other person or persons, as he, she, or they, shall for that purpose nominate or appoint. (7 Geo. 2, ch. 20, § 1, 1734; Kilty's Rep. 251; Alex. Br. Stat. 726; Comp. Stat., D. C., p. 395, § 1.)

§ 45–606. In foreclosure suits court may upon motion by defendant, and admission of right of plaintiff, make a final decree without suit being brought to regular hearing.

Where any bill or bills, suit or suits, shall be filed, commenced, or brought in the court of equity, by any person or persons having or claiming any estate, right, or interest, in any lands, tenements, or hereditaments, under or by virtue of any mortgage or mortgages thereof, to compel the defendant or defendants in such suit or suits (having or claiming a right to redeem the same) to pay the plaintiff or plaintiffs in such su t or suits, the principal money and interest due on any such mortgage, or the principal money and interest due on such mortgage, together with any sum or sums of money due on any encumbrance or specialty, charged or chargeable on the equity of redemption thereof, and in default of payment thereof, to foreclose such defendant or defendants of his, her, or their right or equity of redeeming such mortgaged lands, tenements, or hereditaments; such

equity court, where such suit or suits shall be depending, upon application made to such court by the defendant or defendants in such suit, having a right to redeem such mortgaged lands, tenements, or hereditaments, and upon his or their admitting the right and title of the plaintiff or plaintiffs in such suit, may and shall at any time or times, before such suit or cause shall be brought to hearing, make such order or decree therein, as such court or courts might or could have made therein, in case such suit or cause had then been regularly brought to hearing before such court or courts; and all parties to such suit or suits shall be bound by such order or decree so made, to all intents and purposes, as if such order or decree had been made, by such court, at or subsequent to the hearing of such cause or suit. (7 Geo. 2, ch. 20, § 2, 1734; Kilty's Rep. 251; Alex. Br. Stat. 727; Comp. Stat. D. C., p. 396, § 2.)

RULES OF CIVIL PROCEDURE

Forms of actions abolished, see Rule 2, 28 U.S.C. App.

§ 45–607. Foreclosure—Exceptions to payment.

Sections 45–605, 45–606 or any thing therein contained, shall not extend to any case where the person or persons, against whom the redemption is or shall be prayed, shall (by writing under his, her, or their hands, or the hand of his, her, or their attorney, agent, or solicitor, to be delivered before the money shall be brought into such court at law, to the attorney or solicitor for the other side) insist, either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums, than what appear on the face of the mortgage, or shall be admitted on the other side; nor to any case where the right of redemption to the mortgaged lands and premises in question in any cause or suit shall be controverted or questioned by or between different defendants in the same cause or suit; nor shall be any prejudice to any subsequent mortgagee or mortgagees, or subsequent encumbrancer. (7 Geo. 2, ch. 20, § 3, 1734; Kilty's Rep. 251; Alex. Br. Stat. 728; Comp. Stat., D. C., p. 397, § 3.)

§ 45–608. Infant trustee or mortgagee may convey on petition to court by mortgagor, beneficiary, or guardian.

It shall and may be lawful to and for any person or persons, under the age of one and twenty years, by the direction of the court of chancery, signified by an order made upon hearing all parties concerned, on the petition of the person or persons for whom such infant or infants shall be seized or possessed in trust, or of the mortgagor or mortgagors, guardian or guardians of such infant or infants, or person or persons entitled to the monies secured by or upon any lands, tenements, or hereditaments, whereof any infant or infants are or shall be seized or possessed by way of mortgage, or of the person or persons entitled to the redemption thereof, to convey and assure any such lands, tenements, or hereditaments, in such manner as the said court of chancery shall, by such order so to be obtained, direct, to any other person or persons; and such conveyance or assurance so to be had and made, as aforesaid, shall be as good and effectual in law, to all intents and purposes whatsoever, as if the said infants or infant were, at the time of making such conveyance, or assurance, of the full age of one and twenty years. (7 Ann, ch. 19, § 1, 1708; Kilty's Rep. 247; Alex. Br. Stat. 679; Comp. Stat., D. C., p. 79, § 13.)

§ 45–609. Infant trustee or mortgagee may be compelled by order of court to make conveyance and assurance.

All and every such infant or infants, being only trustee or trustees, mortgagee or mortgagees, as aforesaid, shall and may be compelled by such order so, as aforesaid, to be obtained, to make such conveyance or conveyances, assurance or assurances, as aforesaid, in like manner as trustees or mortgagees of full age are compellable to convey or assign their trust, estates, or mortgages. (7 Ann. ch. 19, § 2, 1708; Kilty's Rept. 247; Alex. Br. Stat. 680; Comp. Stat. D. C., p. 79, § 14.)

§ 45–610. Mortgagee may redeem prior mortgage.

If it so happen there be more than one mortgage at the same time made, by any person or persons to any person or persons, of the same lands and tenements, the several late or under mortgagees, his, her, or their heirs, executors, administrators, or assigns, shall have power to redeem any former mortgage or mortgages, upon payment of the principal debt, interest, and costs of suit, to the prior mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns; any thing therein contained to the contrary thereof in any wise notwithstanding. (4 and 5 W. and M., ch. 16, § 4, 1692; Kilty's Rep. 242; Alex. Br. Stat. 579; Comp. Stat., D. C. 237, § 26.)

§ 45–611. Appointment of trustee to sell in event of death of mortgagee or trustee.

In case of the death of a sole mortgagee or trustee, or the last survivor of several, if the debt secured by the mortgage or deed of trust shall not have been paid, the party entitled thereto may file a petition in the United States District Court for the District of Columbia, setting forth under oath the execution of the mortgage or deed of trust, the death of the mortgagee or trustee, and the fact that the debt secured by the said mortgage or deed of trust remains unpaid, and such other fact as may be necessary to entitle the petitioner to the relief prayed, and praying for the appointment of a trustee to execute the trusts of the said mortgage or deed of trust. It shall not be necessary to make the heirs at law or devisees of the deceased mortgagee or trustee parties to such proceeding. The court may thereupon lay a rule upon the debtor or parties whose property is bound by said mortgage or deed of trust, unless they shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the 10th day, exclusive of Sundays and legal holidays, after the service of such rule, why the prayer of said petition should not be granted. If said party or parties can not be found in said District, service of said rule shall be by publication, according to the practice in equity in said court. If no cause be shown, notwithstanding the service of said rule, against the prayer of said petition, the court may determine in a summary way whether said debt remains unpaid, and if satisfied thereof the said court

may, by decree, appoint a new trustee in the place of the deceased mortgagee or trustee, and vest in him all the title at law and in equity, and all the powers that had been conveyed to and vested in the deceased mortgagee or trustee. Nothing contained in this section shall prevent the appointment of a new trustee pursuant to section 45–614(b) and the execution of the trusts of said deed of trust by such new trustee. (Mar. 3, 1901, 31 Stat. 1272, ch. 854, § 534; June 30, 1902, 32 Stat. 532, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89–706, § 1(b).)

AMENDMENTS

1966—Act Nov. 2, 1966, added sentence: "Nothing contained in this section shall prevent the appointment of a new trustee pursuant to section 45–614(b) and the execution of the trusts of said deed of trust by such new trustee."

1902—Act June 30, 1902, inserted after "heirs at law" the words "or devisees."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act Nov. 2, 1966, as applicable to all deeds of trust, whether entered into before, on, or after Nov. 2, 1966, see § 2 of such act, set out as a note under § 45–603.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

FEDERAL RULES OF CIVIL PROCEDURE

Forms of actions abolished, see Rule 2, 28 U.S.C. App.

NOTES TO DECISIONS

In general

Quaere: Whether this section and § 45–614 were intended to supersede the former course of procedure in equity for the removal and appointment of trustees. *Marshall* v. *Kraak* (1904, 23 App. D.C. 129).

New trustees appointed

Where trustees appointed under deed of trust died, new trustees were appointed to execute the trusts, and were invested with all the powers which had been conveyed to the deceased trustees. *Dawson* v. *Taylor* (1925, 4 F. 2d 430, 55 App. D.C. 237).

No provision requiring notice

This section does not contain a provision requiring notice, actual or constructive, to all parties in interest. *Totten* v. *Harlowe* (1937, 88 F. 2d 755, 66 App. D.C. 373).

Publication upon absconding trustee

Publication need not be had upon an absconding trustee, whose whereabouts is unknown. *Marshall* v. *Kraak* (1904, 23 App. D.C. 129).

Res judicata

Where mortgagor's successor, in suit by noteholder's successor for appointment of substitute trustee to sell the realty under deed of trust, raised question of laches and opposed appointment of substitute trustee, an unappealed from summary judgment appointing substitute trustee and directing him to sell the realty was res judicata, precluding mortgagor's successor from raising same question in subsequent suit to enjoin the sale. *Mergardt* v. *Colonial-American Nat. Bank of Roanoke* (1944, 140 F. 2d 701, 78 U. S. App. D. C. 348).

Trustees' refusal to perform

Trustees' "refusal or disability to perform the trust is the equivalent in equity of a renunciation of the legal estate." *Marshall* v. *Kraak* (1904, 23 App. D.C. 129).

§ 45–612. Defenses against foreclosure.

If matter of defense against the foreclosure of said mortgage or the enforcement of said deed of trust be set up in answer to said rule, the further proceedings shall be according to the practice in equity after answer filed. (Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 535.)

NOTES TO DECISIONS

Generally

Foreclosure may be had by proceeding in equity, without calling on trustees to sell under power of sale in deed of trust. *Utermehle* v. *McGreal* (1893, 1 App. D.C. 359, reversed on other grounds 17 S. Ct. 961, 167 U.S. 688, 42 L. Ed. 326).

Limitations or laches

Upon the ground of lapse of time alone, there is no room for the joint application of the statute of limitations and the doctrine of laches where they would conflict with each other, and the equitable doctrine would have the effect of reducing the statutory period of limitations. *Sis* v. *Boarman* (1897, 11 App. D.C. 116).

On petition by holder of note secured by mortgage to participate in proceeds of sale of mortgaged property in foreclosure proceedings instituted by holder of other note, the bar of limitation, or lapse of time, does not apply as in case of an action on the note, but to the remedy for the enforcement of an equitable right in land under the mortgage; hence the same period that would bar an ejectment is required. *Cropley* v. *Eyster* (1896, 9 App. D.C. 373).

§ 45–613. Replacement of deceased trustee.

In case of the death of any trustee appointed as aforesaid without having executed the trusts of the mortgage or deed of trust, a like proceeding to that provided for in section 45–611 may be had to appoint a successor to him in the said trusts. (Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 536.)

§ 45–614. Appointment of new trustee to sell in event of refusal or inability to act or removal of trustee from District, or for other good cause—Appointment of new trustee by agreement of parties.

(a) In case of the refusal of any trustee named in a deed of trust to secure a debt to accept the trusts thereby created, or of his resignation of said trust after accepting the same, which is hereby allowed, or of his removal from the District of Columbia, or of his inability to act, or for any other good cause shown, it shall be lawful for any party interested in the execution of such trusts to apply to said court by petition, setting forth the appropriate facts and asking for the appointment of a new trustee in his place, and a like proceeding shall be had for the appointment of such trustee as in the case of the death of a trustee, as directed in sections 45–611 and 45–619 of this title: *Provided*, That any rule to show cause issued in such case shall be served upon the existing trustee, as provided in said sections.

(b) Notwithstanding the provisions of subsection (a) of this section, and notwithstanding any provision in a deed of trust to the contrary, whenever the grantors named in, and the persons secured by, the deed of trust (or their successors in interest) so desire, they may by written agreement executed and acknowledged in the same manner as an absolute deed substitute any trustee named in the deed of trust with a new trustee. No written instrument entered into pursuant to this subsection shall be effective as to any person not having

actual notice thereof until a notice of the appointment of the new trustee signed, sealed, and acknowledged by the parties agreeing to the appointment of the new trustee shall be recorded among the land records in the Office of the Recorder of Deeds. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 538; June 30, 1902, 32 Stat. 532, ch. 1329; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89–706, § 1(d).)

AMENDMENTS

1966—Act Nov. 2, 1966, designated the then existing provisions as subsec. "(a)", and added subsec. (b).

1902—Act June 30, 1902, substituted "provided in said sections" for "well as upon the parties interested in the trust, if he and they can be found within the said District", and deleted "said trust being executed" following "good cause shown."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act Nov. 2, 1966, as applicable to all deeds of trust, whether entered into before, on, or after Nov. 2, 1966, see § 2 of such act, set out as a note under § 45–603.

NOTES TO DECISIONS

Discretion of court

Where deed of trust named first and second successor trustees, one of whom was in jail and the other awaiting trial, the court could in its reasonable discretion appoint a new trustee. *Wright* v. *Pitts* (1933, 66 F. 2d 197, 62 App. D.C. 217).

Effect of order

Appointment of substitute trustee—conclusiveness of order. *Bowen* v. *Mount Vernon Sav. Bank* (1936, 85 F. 2d 396, 66 App. D.C. 139).

Laches

Alleged laches of noteholder's successor in seeking appointment of substitute trustee to sell property under deed to trust in accordance with a prior decree did not go to court's jurisdiction to order a sale under such decree. *Mergardt* v. *Colonial-American Nat. Bank of Roanoke* (1944, 140 F. 2d 701, 78 U.S. App. D.C. 348).

Party interested

Where holder of one of 490 notes brings suit to procure substitution of trustees, it was not necessary to have a class or representative suit. *Totten* v. *Harlowe* (1937, 88 F. 2d 755, 66 App. D.C. 373).

Res judicata

Where mortgagor's successor, in suit by noteholder's successor for appointment of substitute trustee to sell the realty under deed of trust, raised question of laches and opposed appointment of substitute trustee, an unappealed from summary judgment appointing substitute trustee and directing him to sell the realty was res judicata, precluding mortgagor's successor from raising same question in subsequent suit to enjoin the sale. *Mergardt* v. *Colonial-American Nat. Bank of Roanoke* (1944, 140 F. 2d 701, 78 U. S. App. D. C. 348).

§ 45–615. Terms of sale.

If the length of notice and terms of sale are not prescribed by the mortgage or deed of trust, or be not left therein to the judgment or discretion of the mortgagee or trustee, any person interested in such sale may apply to the court, before such sale is advertised, to fix the terms of sale and determine what notice of sale shall be given. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 539; June 30, 1902, 32 Stat 532, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, deleted "which terms shall be such as to secure to the creditor the payment of his debt in cash as nearly as may be consistent with justice; and the determination of the court in the premises shall be binding on all parties in interest", following "sale shall be given."

NOTES TO DECISIONS

Judicial sale distinguished

Where trustee appointed by the court to succeed surviving trustee who refused to serve made a sale, such sale was not a judicial sale, but a sale in accordance with the terms of the trust and the question of notice is governed by this section. *Stokes* v. *Hinden* (1936, 85 F. 2d 200, 66 App. D.C. 34).

§ 45–616. Sale of property and deficiency decree in personam—Same relief in re vendor's lien.

In all cases of application to said court to foreclose any mortgage or deed of trust, the equity court shall have authority, instead of decreeing that the mortgagor be foreclosed and barred from redeeming the mortgaged property, to order and decree that said property be sold and the proceeds be brought into court to be applied to the payment of the debt secured by said mortgage; and if, upon a sale of the whole mortgaged property, the net proceeds shall be insufficient to pay the mortgage debt, the court may enter a decree in personam against the mortgagor or other party to the suit who is liable for the payment of the mortgage debt for the residue of said debt remaining unsatisfied after applying to said debt the proceeds of such sale: *Provided,* That the complainant would be entitled to maintain an action at law or suit in equity for said residue; which decree shall have the same effect and be enforced by execution in the same manner as a judgment at law. And in suits to enforce a vendor's lien on real estate for unpaid purchase money similar relief may be given by a decree of sale and a decree in personam for the unsatisfied residue of the purchase money due. (Mar. 3, 1901, 31 Stat. 1204, ch. 854, § 95.)

NOTES TO DECISIONS

Judicial sale distinguished

Where trustee under deed of trust obtained leave of court in receivership proceeding to sell real estate, such sale did not constitute a judicial sale. *Huffines* v. *American Security & Trust Co.* (1934, 71 F. 2d 345, 63 App. D.C. 224).

Prior law

Prior to enactment of this act, R. S. § 808 applied to foreclosure of mortgages in the District of Columbia. *Dodge* v. *Freedman's Sav. & Trust Co.* (1882, 1 S. Ct. 335, 106 U.S. 445, 27 L. Ed. 206). See, also, *Shepherd* v. *Pepper* (1890, 10 S. Ct. 438, 133 U.S. 626, 33 L. Ed. 706).

Proceeds of sale

Sole action on a note secured by mortgage after foreclosure is an action for difference between what was realized at the sale and what is owed on the debt, and it is immaterial that both note and deed of trust are executed, and a creditor can have but one satisfaction, and after a foreclosure sale the proceeds must be applied to payment of the debt leaving the note actionable for the deficiency only. *Finley Jr. and Finley* v. *Friedman* (D.C. Mun. App. 1960, 159 A. 2d 668).

The statutes indicate that a deficiency judgment after mortgage foreclosure may properly be rendered by court at a judicial foreclosure, that after a sale pursuant to a power contained in a deed of trust, the purchasing creditor need pay to the trustee only the excess of purchase money over what is owed him, and it would be inconsistent with the statute to hold, that if the sale brings less than the amount of the debt, a purchasing creditor need not apply the amount realized to the debt before he can maintain an action on the debtor's personal obligation. *Id.*

Purpose

This section was intended to empower the court to combine in a single action relief by way of foreclosure and

personal judgment. *Hoffman* v. *Sheahin* (1941, 121 F. 2d 861, 73 App. D.C. 374).

Time to enforce liability

This section does not extend the time for bringing an independent action to enforce personal liability after foreclosure by nonjudicial sale. *Hoffman* v. *Sheahin* (1941, 121 F. 2d 861, 73 App. D.C. 374).

§ 45–617. Creditor buying.

If a creditor, for the payment of whose debt property shall be sold under a deed of trust, shall become the purchaser at such sale, he shall be entitled to credit the amount of the purchase money against the debt, and shall be only required to pay to the trustee the excess of the purchase money over his debt, together with such additional amount as may be necessary to defray the expenses of the sale. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 544.)

NOTES TO DECISIONS

Generally

When the creditor becomes a purchaser at the sale, he is entitled to credit the amount of the purchase money to the debt. *Orlove* v. *National Sav. & Trust Co.* (1938, 98 F. 2d 259, 68 App. D.C. 387). See, also, *Kosters* v. *Hoover* (1938, 98 F. 2d 595, 69 App. D.C. 66).

Liability for profits from unlawful sale

Attorneys who knowingly confederated with receiver were liable for all profits resulting from purchase as foreclosure sale and resale of property, with interest and costs. *Jackson* v. *Smith* (1921, 41 S. Ct. 200, 254 U.S. 586, 65 L. Ed. 418).

Proceeds of sale

Sole action on a note secured by mortgage after foreclosure is an action for difference between what was realized at the sale and what is owed on the debt, and it is immaterial that both note and deed of trust are executed, and a creditor can have but one satisfaction, and after a foreclosure sale the proceeds must be applied to payment of the debt leaving the note actionable for the deficiency only. *Finley Jr. and Finley* v. *Friedman* (D.C. Mun. App. 1960, 159 A. 2d 668).

The statutes indicate that a deficiency judgment after mortgage foreclosure may properly be rendered by court at a judicial foreclosure, that after a sale pursuant to a power contained in a deed of trust, the purchasing creditor need pay to the trustee only the excess of purchase money over what is owed him, and it would be inconsistent with the statute to hold, that if the sale brings less than the amount of the debt, a purchasing creditor need not apply the amount realized to the debt before he can maintain an action on the debtor's personal obligation. *Id.*

§ 45–618. Expenses and commissions.

Among the lawful expenses of a sale under a mortgage or deed of trust is to be allowed a commission on the proceeds of sale to the mortgagee or trustee. Where the mortgage or deed of trust does not fix the rate of commission the mortgagee or trustee shall be allowed a commission of five per centum on the first five hundred dollars and three per centum on the balance of the purchase money actually paid by the purchaser at any sale, and one and one-half per centum on the amount of the purchase money not paid into the hands of the mortgagee or trustee, but credited on the debt, when the creditor becomes a purchaser.

When the property is lawfully advertised for sale under a mortgage or deed of trust, and the sale is prevented by payment of the debt or is suspended or postponed by arrangement between the parties interested, the trustee shall be entitled to a commission of one per centum on the amount of the debt secured in addition to the expenses incurred by him, and he shall be entitled to such allowance as often as such advertisement shall be made necessary by the default of the debtor: *Provided,* That if a sale shall actually take place under any such advertisement, he shall not be entitled to more than one such allowance in addition to his commission on the proceeds of an actual sale. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 545.)

NOTES TO DECISIONS

Allocation

In action to foreclose a trust deed, it was for the District Court to allocate compensation and expenses of receiver who was appointed on defendant's motion, in accordance with justice, unburdened by any fixed rule. *Camp* v. *Canelacos* (1942, 131 F. 2d 236, 76 U.S. App. D.C. 337).

§ 45–619. Release after death of mortgagee or trustee.

In case of the death of a sole mortgagee or trustee or the last survivor of several, as aforesaid, if the debt secured by the mortgage or deed of trust shall have been paid, and it is desired by the party paying the same to obtain a deed of release, the said party may file a petition in said United States District Court for the District of Columbia, setting forth, under oath, the execution of said mortgage or deed of trust, the death of the mortgagee or trustee, the payment of the debt, and any other fact necessary to entitle the petitioner to the relief prayed, and praying for the appointment of a trustee in the place of the deceased mortgagee or trustee to execute a deed of release of said mortgage or deed of trust. It shall not be necessary to make the heirs or devisees of the deceased mortgagee or trustee a party to such proceeding. The court may thereupon lay a rule upon the creditor secured by said mortgage or deed of trust, unless he shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the 10th day, exclusive of Sundays and legal holidays, after the service of said rule, why the prayer of the petition should not be granted. If said party can not be found in said District, service of said rule shall be by publication according to the practice in equity in said court. If no cause be shown, notwithstanding the service of said rule, against the prayer of the petition, the court may determine in a summary way whether said debt has been paid, and if satisfied thereof may, by decree, appoint a trustee in the place of the deceased mortgagee or trustee and invest in him the title, in law and in equity, that was in the deceased mortgagee or trustee, for the purpose of executing a deed of release as aforesaid. If matter of defense against the prayer for a release of said mortgage or deed of trust be set up in answer to said rule, the further proceedings shall be according to the practice in equity after answer filed. Nothing contained in this section shall prevent the appointment of a new trustee pursuant to section 45–614(b) and the execution of a deed of release by such new trustee. (Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 537; June 30, 1902, 32 Stat. 532, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89–706, § 1(c).)

AMENDMENTS

1966—Act Nov. 6, 1966, added sentence: "Nothing contained in this section shall prevent the appointment of a new trustee pursuant to section 45–614(b) and the execution of a deed of release by such new trustee."

1902—Act June 30, 1902, inserted after the word "heirs" the words "or devisees."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act Nov. 2, 1966, as applicable to all deeds of trust, whether entered into before, on, or after Nov. 2, 1966, see § 2 of such act, set out as a note under § 45–603.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 45–620. Non compos mentis trustee or mortgagee or committee may by order of the chancellor make conveyance or assurance of mortgaged lands.

It shall and may be lawful to and for any person or persons, being ideot, lunatick, or non compos mentis, or for the committee or committees of such person or persons, in his, her, or their name or names, by the direction of the chancellor, signified by an order made, upon hearing all parties concerned, on the petition of the person or persons, for whom such person or persons, being ideot, lunatick, or non compos mentis, shall be seized or possessed in trust, or of the mortgagor or mortgagors, or of the person or persons intitled to the monies secured by or upon any lands, tenements, or hereditaments, whereof any such person or persons being ideot, lunatick, or non compos mentis, is or are, or shall be seized or possessed by way of mortgage, or of the person or persons intitled to the redemption thereof, to convey and assure any such lands, tenements, or hereditaments, in such manner as the chancellor shall, by such order so to be obtained, direct, to any other person or persons; and such conveyance or assurance, so to be had and made as aforesaid, shall be as good and effectual in law, to all intents and purposes whatsoever, as if the said person or persons being ideot, lunatick, or non compos mentis, was or were, at the time of the making such conveyance or assurance, of sane mind, memory, and understanding, and not ideot, lunatick, or non compos mentis, or had by him, her, or themselves executed the same. All and every person and persons being ideot, lunatick, or non compos mentis, and only trustee or trustees, mortgagee or mortgagees, as aforesaid, or the committee and committees of all and every such person and persons, being ideot, lunatick, or non compos mentis, and only such trustee or mortgagee as aforesaid, shall and may be impowered and compelled, by such order so as aforesaid to be obtained, to make such conveyance or conveyances, assurance or assurances, as aforesaid, in like manner as trustees or mortgagees of sane memory are compellable to convey, surrender, or assign their trust estates or mortgages. (4 Geo. 2, ch. 10, §§ 1, 2, 1731; Kilty's Rep. 249; Alex. Br. Stat. 700; Comp. Stat. D.C., p. 78, § 11.)

Chapter 7.—RECORDER OF DEEDS

SUBCHAPTER I.—APPOINTMENT AND FUNCTIONS OF RECORDER

Sec.
45–701. Appointment and duties.
45–701a. Repealed.
45–701b. Purchase of machines—Personnel.
45–702. Deputy recorder—Duties.
45–703. Second deputy—His duties and powers.
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45–704. Vacancy.
45–705. Public records to be open for inspection.
45–706. Typewritten records.
45–707. Certain records to be recopied—Expense.
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45–710. Estimates for annual appropriations—Building, equipment, and supplies.
45–711. Recordation of service and discharge certificates — Fee — Constructive notice — Certified copies—Notices and documents regarding Federal tax liens.
45–712. Office closed on Saturdays.
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45–741. Criminal penalty as to stamps—Illegal acts relating to stamps.
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SUBCHAPTER I.—APPOINTMENT AND FUNCTIONS OF RECORDER

§ 45–701. Appointment and duties.

(a) There shall be a Recorder of Deeds of the District, appointed by the Commissioners of the District of Columbia, who shall:

(1) except as provided by clause (2) of this subsection, record all deeds, contracts, and other instruments in writing affecting the title or ownership of real estate or personal property which have been duly acknowledged and certified;

(2) accept for filing, without acknowledgment or certification, all instruments, financing statements and other papers filed in his office pursuant to Part 4 of Article 9 of Subtitle I of Title 28, and sections 40–701 to 40–712 and 40–713 to 40–715.

(3) perform all requisite services connected with the duties prescribed in clauses (1) and (2) of this subsection; and

(4) have charge and custody of all the records, papers, and property appertaining to his office.

(b) A person may not be appointed Recorder of Deeds unless he has been a resident of the District of Columbia for at least five years next preceding his appointment.

(c) The performance, by the Recorder of Deeds and officers and employees in his office, of their duties and functions shall be subject to the supervision and control of the Commissioners of the District. (Mar. 3, 1901, 31 Stat. 1275, 854, § 548; June 9, 1952, 66 Stat. 129, ch. 373, § 1; Aug. 3, 1954, 68 Stat. 650, ch. 653, § 2; Dec. 30, 1963, 77 Stat. 773, Pub. L. 88–243, § 14.)

AMENDMENTS

1963—Section 14 of act Dec. 30, 1963, amended section generally.

1954—Act Aug. 3, 1954, added provisions concerning supervision and control of the Commissioners over the Recorder of Deeds.

1952—Act June 9, 1952, substituted appointment by the Commissioners of the District of Columbia for appointment by the President with the advice and consent of the Senate, and added the provision requiring at least five years residence in the District of Columbia prior to appointment.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 30, 1963, effective on Jan. 1, 1965. See note preceding article I of subtitle I of title 28.

CROSS REFERENCE

Recording instruments relating to personal property, see § 28:9–301 et seq.

§ 45–701a. Repealed. Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

Section, act Sept. 29, 1943, 57 Stat. 569, ch. 249, § 1, provided for amount of compensation for the Recorder of Deeds. Prior to the repeal, it had been superseded by the Classification Act of 1949 (repealed by the same 1966 act cited in catchline to this section), and it is now covered by 5 U.S.C. § 5102 et seq.

§ 45–701b. Purchase of machines—Personnel.

The Recorder of Deeds of the District of Columbia is authorized and empowered to purchase such machines and equipment as he may deem necessary or expedient for the efficient, expeditious, and economical recording of all deeds and other instruments of writing entitled by law to be recorded, and to employ such personnel as may be required to operate the same and to perform necessary services in connection therewith; and all deeds and other instruments of writing entitled by law to be recorded in the Office of the Recorder of Deeds which are recorded by means of such machines or equipment are hereby declared to be legally recorded. (Aug. 4, 1947, 61 Stat. 730, ch. 456.)

§ 45–702. Deputy recorder—Duties.

The Commissioners of the District of Columbia are authorized to appoint a deputy recorder of deeds in accordance with the civil-service law and regulations and to fix his compensation in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters], and all deeds of conveyance, leases, powers of attorney, and other written instruments required to be filed and recorded, and all copies of instruments and records and certificates authorized by law, filed, recorded, made, and certified by the deputy recorder shall have the same legality, force, and effect as if performed by the recorder. (Mar. 3, 1901, 31 Stat. 1275, ch. 854, § 549; June 9, 1952, 66 Stat. 129, ch. 373, § 2; Aug. 3, 1954, 68 Stat. 650, ch. 653, § 3.)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters," was substituted for "the Classification Act of 1949]", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENTS

1954—Act Aug. 3, 1954, substituted "The Commissioners of the District of Columbia are authorized to appoint a deputy recorder of deeds" for "The Recorder of Deeds is authorized to appoint a deputy recorder."

1952—Act June 9, 1952, inserted "in accordance with the civil-service law and regulations and to fix his compensation in accordance with the Classification Act of 1949."

§ 45–703. Second deputy—His duties and powers.

The Commissioners of the District of Columbia are authorized to appoint a second deputy recorder of deeds in accordance with the civil-service laws and regulations and to fix his compensation in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. code [relating to the classification of government employees and related matters]. The second deputy recorder may do and perform any and all acts which the Recorder is authorized to do, and all such acts by the second deputy recorder shall have the same legality, force, and effect as if performed by the Recorder. The Commissioners of the District of Columbia shall appoint all employees in the office of the Recorder of Deeds, except the Recorder, in accordance with civil-service laws and fix the compensation of all employees in such office in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters], and the said Commissioners may delegate to any officer subordinate to them the function of appointing any of the employees in such office other than the Recorder. The number of such

employees shall not be in excess of the number actually necessary for the proper conduct of his office. (Mar. 3, 1925, 43 Stat. 1102, ch. 416; June 9, 1952, 66 Stat. 129, ch. 373, § 3; Aug. 3, 1954, 68 Stat. 651, ch. 653, § 4.)

CODIFICATION

The references in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code, relating to the classification of government employees and related matters," were substituted for "the Classification Act of 1949" and "the Classification Act of 1949, as amended", on authortiy of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENTS

1954—Act Aug. 3, 1954, provided that the Commissioners, instead of the Recorder, appoint a second deputy recorder of deeds, and the employees of the Recorder's office.

1952—Act June 9, 1952, conformed the section to the Classification Act of 1949.

§ 45–703a. Repealed. Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

Section, act June 9, 1952, 66 Stat. 130, ch. 373, § 4, authorized conversion of citizen employees of office of Recorder of Deeds to competitive status, and provided that employees who failed of conversion might continue to serve for not more than six months from June 9, 1952, plus thirty days.

§ 45–704. Vacancy.

In case of a vacancy in the office of the recorder by death, resignation, or other cause the deputy recorder shall act until a recorder shall be duly appointed and qualified. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 550; Apr. 24, 1926, 44 Stat. 322, ch. 176, § 2.)

AMENDMENT

1926—Act Apr. 24, 1926, deleted a proviso stating that "no additional expense shall be incurred by the District for said deputy and no other fees shall be allowed than are now provided by law."

§ 45–705. Public records to be open for inspection.

All public records which have reference to or in any way relate to real or personal property in the District of Columbia, whether the same be in the office of the recorder of deeds or in some other public office in the District of Columbia, shall be open to the public for inspection free of charge. (Mar. 3, 1901, 31 Stat. 1277, ch. 854, § 556.)

§ 45–706. Typewritten records.

The recorder of deeds is authorized and empowered to purchase and use in his office, for the recording of deeds and other instruments of writing required by law to be recorded in said office, typewriting machines, to be paid for as appropriations may be made from time to time; and all deeds and other instruments of writing entitled by law to be recorded in said office which shall be recorded by typewriting machines are hereby declared to be legally recorded.

The recording of all instruments filed for record in the office of the recorder of deeds shall be done with book typewriter, except in those cases where, on account of the character of the work, the use of a pen shall be found by the recorder to be necessary. (Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 551; June 27, 1906, 34 Stat. 489, ch. 3553.)

AMENDMENT

1906—Act June 27, 1906, provided that the recording of instruments shall be done with book typewriter, except where a pen is found necessary.

§ 45–707. Certain records to be recopied—Expense.

The recorder of deeds of the District of Columbia is authorized and directed to recopy such of the records in his office as may, in his judgment and that of the United States District Court for the District of Columbia, or one of its justices appointed by it for that purpose, need recopying in order to preserve the originals from destruction: *Provided,* That the expense thereof shall not in any one fiscal year exceed the sum of one thousand dollars certified to by the said District Court, or by one of its justices appointed by it for that purpose, and audited and allowed by the General Accounting Office. (Feb. 26, 1907, 34 Stat. 994, ch. 1636; June 10, 1921, 42 Stat. 24, ch. 18, § 304; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1921—Act June 10, 1921, substituted "general accounting office" for "accounting officer of the Treasury."

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 45–708. Fees of recorder of deeds.

The legal fees for the services of the recorder shall be as follows:

For filing, recording, and indexing, or for making certified copy of any instrument containing two hundred words or less, $1, and 20 cents for each additional hundred words, to be collected at the time of filing, or when the copy is made.

For each certificate and seal, 50 cents.

For searching records extending back two years or less next preceding current date, 50 cents, and 15 cents for each additional year, to be paid by the party for whom the search may be made.

For recording a plat or survey, 20 cents for each course such survey may contain.

For recording a town plat, 25 cents for each lot such plat may contain.

For taking any acknowledgment, 50 cents.

For filing and indexing a bill of sale of chattels, or a mortgage or deed of trust thereof, or a conditional bill of sale of chattels, including a release of any such instrument, $2: *Provided,* That for the filing of a release of any such instrument filed prior to September 3, 1952, the Recorder of Deeds shall collect a fee of 50 cents.

For filing an affidavit pursuant to section 42–104, $2.

For filing and indexing any other paper required by law to be filed in his office, 50 cents.

For filing and recording a certified copy of a judgment, decree, or entry or order of forfeiture of

a recognizance, filed and recorded under section 15–102(a), $1.00.

For recording the release of a lien established by the recordation of a judgment, decree, or an entry or order of forfeiture of a recognizance under section 15–102(a), 50 cents.

In addition to the fees herein required, all corporations hereafter incorporated in the District of Columbia shall pay to the recorder of deeds at the time of the filing of the certificate of incorporation 50 cents on each thousand dollars of the amount of capital stock of the corporation as set forth in its said certificate: *Provided, however,* That the fee so paid shall not be less than $50: *Provided further,* That the recorder of deeds shall not file or record any certificate of organization of any incorporation until it has been proved to his satisfaction that all the capital stock of said company has been subscribed for in good faith, and not less than 10 per centum of the par value of the stock has been actually paid in cash, and the money derived therefrom is then in the possession of the persons named as the first board of trustees.

In addition to fees otherwise provided for, the Recorder of Deeds shall charge and collect the following fees:

(1) for filing and recording each notice of mechanic's lien, $1;

(2) for entering release of mechanic's lien, 50 cents for each order of lienor; and

(3) for each undertaking of lienee, 75 cents.

(Mar. 3, 1901, 31 Stat. 1276, ch. 854, § 552; Feb. 4, 1905, 33 Stat. 689, ch. 299; June 17, 1935, 49 Stat. 384, ch. 265; June 5, 1952, 66 Stat. 128, ch. 370, § 5; July 5, 1966, 80 Stat. 265, Pub. L. 89–493, § 15(c); Nov. 2, 1966, 80 Stat. 1178, Pub. L. 89–745, § 6.)

CODIFICATION

Section is a composite of act Mar. 3, 1901, ch. 854, § 552, 31 Stat. 1276, as amended by the acts of Feb. 5, 1905, June 17, 1935, June 6, 1952, and Nov. 2, 1966, cited, and of act July 5, 1966, 80 Stat. 265, Pub. L. 89–493, § 15(c). Said § 15(c) of the act of July 5, 1966, is classified as the last paragraph of this section, prescribing the fees to be collected with respect to filing and recording notices of mechanics' liens, orders of lienors with respect to entering releases of mechanics' liens, and undertakings of lienees.

The provisions of the paragraph pertaining to fees upon filing of certificate of incorporation, requiring stock subscription, minimum percentage payment and possession of funds by the first board of trustees, are also set out as section 29–104.

AMENDMENTS

1966—Section 6 of act Nov. 2, 1966, amended section by adding two paragraphs prescribing fees for filing and recording certified copy of judgment, decree, or entry or order of forfeiture of recognizance, filed and recorded under § 15–102(a), and for recording release of lien established by recordation of judgment, decree, or entry or order of forfeiture of recognizance § 15–102(a).

1952—Act June 5, 1952, substituted "For filing and indexing a bill of chattels, or a mortgage or deed of trust thereof, or a conditional bill of sale of chattels, including a release of any such instrument, $2: Provided, That for the filing of a release of any such instrument filed prior to September 3, 1952, the Recorder of Deeds shall collect a fee of 50 cents", For "filing and indexing a bill of sale of chattels, or a mortgage or deed of trust thereof, or a conditional bill of sale of chattels or any release or satisfaction of any such, $1.50", and added "For filing an affidavit pursuant to section 42–104, $2."

1935—Act June 17, 1935, raised the various fees and added "For filing and indexing a bill of sale of chattels; or a mortgage or deed of trust thereof, or a conditional bill of sale of chattels or any release or satisfaction of any such, $1.50."

1905—Act Feb. 4, 1905, added provisions relating to fees payable by corporations when filing the certificate of incorporation.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 8(c) of act Nov. 2, 1966, provided: "The amendment made by section 6 of this Act [to this section] shall take effect on and after Nov. 1, 1966."

EFFECTIVE DATE OF 1966 ACT

Act July 5, 1966 (of which § 15(c) is classified as final paragraph of this section), as effective on first day of first month which was at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act June 5, 1952, effective ninety days after June 5, 1952, see § 6 of act June 5, 1952, set out as a note under section 42–102.

APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, of which § 15(c) is classified as final paragraph of this section, see § 20 of such act, set out as a note under § 1–504.

FEES FOR ENTERING RELEASE OF MECHANIC'S LIEN, ETC.

Provisions substantially similar to clauses (2) and (3) of final paragraph of this section (see codification note above), relating, with respect to entering release of mechanic's lien, to fees to be collected by the Recorder of Deeds for each order of lienor, and each undertaking of lienee, are still contained in par. (17) of subsec. (e) of § 15–706, except that that paragraph provides for such fees to be collected by the clerk of the U.S. District Court. See note under said § 15–706.

CROSS REFERENCES

Fees under Motor Vehicle Lien Law, see § 40–712.

Recordation of instruments relating to personal property, see Title 28, Subtitle I, and Title 40, ch. 1.

Recording fees under Money Lenders Law, see § 26–605.

NOTES TO DECISIONS

Entrance fee

Entrance fee is not a tax, but compensation for a privilege applied for and granted, and it does not represent either property or business being done, it is immaterial that in fixing its amount no apportionment is made between the property owned or the business done within the State and that owned or done elsewhere. *Atlantic Ref. Co.* v. *Virginia* (1937, 58 S. Ct. 75, 302 U.S. 22, 82 L. Ed. 24).

Entrance fee is not a charge laid upon interstate commerce; nor a charge furtively directed against interstate commerce, and it should apply to foreign corporations as well as domestic. *Id.*

This section does not deprive foreign corporation of its property without due process as the entrance fee is not measured by property, either within or without the jurisdiction. *Id.*

§ 45–709. Fees and emoluments of recorder of deeds deposited with collector of taxes.

All of the fees and emoluments of the office of recorder of deeds of the District of Columbia shall be paid at least weekly to the collector of taxes for the District of Columbia for deposit in the Treasury of the United States to the credit of the District of Columbia. (Apr. 24, 1926, 44 Stat. 322, ch. 176, § 1.)

§ 45–710. Estimates for annual appropriations—Building, equipment, and supplies.

The annual estimates of appropriations for the government of the District of Columbia shall include estimates of appropriations for the operation and maintenance of the office of the recorder of deeds. And appropriations are hereby authorized for a suitable record building for the office of the recorder of

deeds, and for personal services, rentals, office equipment, office supplies, and such other expenditures as are essential for the efficient maintenance and conduct of such office. (Apr. 24, 1926, 44 Stat. 322, ch. 176, § 2.)

§ 45–711. Recordation of service and discharge certificates—Fee—Constructive notice—Certified copies—Notices and documents regarding Federal tax liens.

(a) The recorder shall also receive for record and record all certificates of service and certificates of discharge of persons released from active duty in or discharged from the armed forces of the United States, for which no fee shall be charged or collected, but the record of any certificate authorized by this section to be recorded shall not constitute constructive notice of the existence or contents of such certificate. For making certified copies of any of the foregoing certificates from the records in the office of the recorder the usual fees shall be charged.

(b) The Recorder of Deeds shall accept for filing any notice of Federal tax lien or any other document affecting such a lien if such notice or document is in the form prescribed by the Secretary of the Treasury or his delegate and could be filed with the clerk of the United States District Court for the District of Columbia. The fee for each such filing with the Recorder of Deeds shall be the same as the fee charged by the Recorder of Deeds for filing a similar document for a private person. The Recorder of Deeds shall bill the District Director of Internal Revenue on a monthly basis for fees for documents filed by such District Director. Any document releasing or affecting any notice of Federal tax lien which has been filed with the clerk of the United States District Court for the District of Columbia prior to the effective date of this act shall be filed with such clerk. (Mar. 3, 1901, ch. 854, § 548a, as added Apr. 27, 1945, ch. 101, 59 Stat. 100, and amended July 5, 1966, 80 Stat. 266, Pub. L. 89–493, § 17(b).)

REFERENCES IN TEXT

Words in subsec. (b), "effective date of this Act," refer to effective date of act July 5, 1966, which added that subsection. See note headed "Effective Date of 1966 Amendment", below.

AMENDMENT

1966—Act July 5, 1966, designated then existing single paragraph as subsec. (a), and added subsec. (b) relating to filing of notices of Federal tax liens or other documents affecting such liens, fee for each such filing, etc.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

APPPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1–504.

CROSS REFERENCE

Federal tax liens on property situated in District of Columbia, invalidity as against mortgagees, etc., until notice has been filed in office of Recorder of Deeds, see 26 U.S.C.A. § 6323(a)(3).

§ 45–712. Office closed on Saturdays.

Notwithstanding the provisions of any other Act, the Office of the Recorder of Deeds for the District of Columbia shall be closed on every Saturday. (Aug. 2, 1946, 60 Stat. 860, ch. 758, § 1.)

§ 45–713. Time extended for recording writings.

Any writing, the time for recording of which expires on a Saturday, or on a Sunday, shall be deemed to have been recorded within the time prescribed if such writing be recorded on the first day thereafter other than Sunday or a legal holiday. (Aug. 2, 1946, 60 Stat. 861, ch. 758, § 2.)

§ 45–714. Authority of Commissioners to increase or decrease fees.

(a) Notwithstanding the provisions of section 45–708, sections 40–712 and 40–712a, or any other Act of Congress, the Commissioners of the District of Columbia may, from time to time, increase or decrease the fees authorized to be charged for filing, recording, and indexing or for making a certified copy of any instrument; for searching records; for taking acknowledgments; for recording plats; for filing affidavits; for filing certificates of incorporation and amendments of certificates; for recording liens, assignments of liens, or releases of liens on motor vehicles or trailers; or for any other service rendered by the office of the Recorder of Deeds.

(b) The fees for services rendered by the office of the Recorder of Deeds shall be fixed at such rates, computed on such bases and in such manner as may, in the judgment of the Commissioners, be necessary to defray the approximate cost of operating the office of the Recorder of Deeds.

(c) Nothing in this section shall be construed as authorizing the Commissioners to modify any provision of the District of Columbia Business Corporation Act, approved June 8, 1954. (Aug. 3, 1954, 68 Stat. 650, ch. 653, § 1.)

REFERENCES IN TEXT

The District of Columbia Business Corporation Act, referred to in the text, is classified to chapter 9 of title 29.

SUBCHAPTER II.—RECORDATION TAX ON DEEDS

§ 45–721. Definitions.

When used in this chapter, unless otherwise required by the context—

(a) The word "District" means the District of Columbia.

(b) The word "Commissioners" means the Commissioners of the District of Columbia, or their duly authorized agents or representatives.

(c) The word "deed" means any document, instrument, or writing (other than a will and other than a lease), regardless of where made, executed, or delivered whereby any real property in the District of Columbia, or any interest therein, is conveyed, vested, granted, bargained, sold, transferred, or assigned.

(d) The words "real property" mean every estate or right, legal or equitable, present or future, vested or contingent in lands, tenements, or hereditaments located in whole or in part within the District.

(e) The word "consideration", except as otherwise provided in section 45–724 of this subchapter, means the price or amount actually paid, or re-

quired to be paid, for real property including any mortgages, liens, or encumbrances thereon.

(f) The word "person" means an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, any individual acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

(g) The word "deficiency" as used in this subchapter means the amount or amounts by which the tax imposed by this subchapter as determined by the Commissioners exceeds the amount shown as the tax upon the return of the person or persons liable for the payment thereof.

(h) The word "taxpayer" means any person required by this title to pay a tax, or file a return. (Mar. 2, 1962, 76 Stat. 11, Pub. L. 87–408, § 301.)

EFFECTIVE DATE

Section 325, act Mar. 2, 1962, provided as follows: "The provisions of this title [classified to sections 45–721 to 45–744] shall take effect on the first day of the first month which begins on or after the sixtieth day after the enactment of this Act."

SHORT TITLE

Section 326, act Mar. 2, 1962, provided as follows: "This title [classified to sections 45–721 to 45–744] may be cited as the 'District of Columbia Real Estate Deed Recordation Tax Act'."

TRANSFER OF FUNCTIONS

Organization Order No. 130, relating to the Office of the Recorder of Deeds, was repealed by Order No. 63–197, Jan. 24, 1963. See Organization Order No. 101 in appendix to title 1.

§ 45–722. Exemptions—Enumeration of deeds exempt from tax.

The following deeds shall be exempt from the tax imposed by this chapter:

1. Deeds recorded prior to the effective date of the enactment of this chapter.

2. Deeds to property acquired by the United States of America or the District of Columbia.

3. Deeds to property acquired by an institution, organization, corporation, association, or government (other than the United States of America or the District of Columbia) entitled to exemption from real property taxation under sections 47–801a to 47–801f, which property was acquired solely for a purpose or purposes which would entitle such property to exemption under said sections 47–801a to 47–801f: *Provided,* That a return, under oath, showing the purpose or purposes for which such property was acquired, shall accompany the deed at the time of its offer for recordation.

4. Deeds to property acquired by an institution, organization, corporation, or association entitled to exemption from real property taxation by special Act of Congress, which property was acquired solely for a purpose or purposes for which such special exemption was granted: *Provided,* That a return, under oath, showing the purpose or purposes for which such property was acquired, shall accompany the deed at the time of its offer for recordation.

5. Deeds which secure a debt or other obligation.

6. Deeds which, without additional consideration confirm, correct, modify, or supplement a deed previously recorded.

7. Deeds between husband and wife, or parent and child, without actual consideration therefor.

8. Tax deeds.

9. Deeds of release of property which is security for a debt or other obligation. (Mar. 2, 1962, 76 Stat. 11, Pub. L. 87–408, § 302.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–723. Imposition of tax—Rate—Returns—Liability for tax.

(a) There is hereby imposed on each deed at the time it is submitted to the Commissioners for recordation a tax at the rate of one-half of 1 per centum of the consideration for such deed: *Provided,* That in any case where application of the rate of tax to the consideration for a deed results in a total tax of less than $1 the tax shall be $1.

(b) Each such deed shall be accompanied by a return under oath in such form as the Commissioners may prescribe, executed by all the parties to the deed, setting forth the consideration for the deed, the amount of tax payable, and such other information as the Commissioners may require.

(c) The parties to a deed which is submitted to the Commissioners for recordation shall be jointly and severally liable for payment of the taxes imposed by this section: *Provided,* That neither the United States nor the District of Columbia shall be subject to such liability.

(d) The Commissioners are authorized—

(1) to prescribe by regulation for reasonable extensions of time for the filing of the return required by subsection (b) of this section; and

(2) to waive as to any party to a deed the requirement for the filing of a return by such party whenever it shall be determined by the Commissioners that a return cannot be filed: *Provided,* That any waiver granted by the Commissioners to a party shall not, unless specifically authorized, be deemed to be a waiver as to any other party. Any waiver made pursuant to this subsection shall not affect the requirements of subsection (c) of this section.

(Mar. 2, 1962, 76 Stat. 12, Pub. L. 87–408, § 303.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–724. Absence of consideration—Basis for computation of tax.

Where no price or amount is paid or required to be paid for real property or where such price or amount is nominal, the consideration for the deed to such property shall, for purposes of the tax imposed by this subchapter, be construed to be the fair market value of the real property, and the tax shall be based upon such fair market value. In any such case, the return required to be filed with the deed shall contain such information as to the fair market value of the real property as the Commissioners shall require. Whenever, in the opinion of the Commissioners, a return does not contain sufficient information as to the fair market value of such real property, the Commissioners are authorized to

make a determination thereof from the best information available. (Mar. 2, 1962, 76 Stat. 12, Pub. L. 87–408, § 304.)

EFFECTIVE DATE

See note to section 45–721.

NOTES TO DECISIONS

Fair market value

Where corporation, in course of liquidation, conveyed to trustees for stockholders realty of fair market value of $1,900,000, and statute provides that where no price is paid, consideration for deed shall, for purposes of recordation tax, be construed to be fair market value of realty, recordation tax was required to be based on fair market value of $1,900,000 and not on $207,335.03. *Dupont Park Apartments, Inc.* v. *District of Columbia; District of Columbia* v. *Dupont Park Apartments, Inc.* (1965, 345 F. 2d 109, 120 U.S. App. D.C. 215).

§ 45–725. Investigation by Commissioners to determine correctness of returns—Production of books and records—Examination of witnesses—Service of summons — Compelling attendance — Punishment for disobedience.

The Commissioners, for the purpose of ascertaining the correctness of any return, statement, affidavit, or other document filed pursuant to the provisions of this subchapter or pursuant to any regulations of the Commissioners promulgated hereunder, or for the purpose of ascertaining the correctness of any payment of the tax imposed by this subchapter, or the consideration for any deed upon which a tax is imposed, are authorized to examine any books, papers, records, or memorandums of any person bearing upon such matters and may summon any person to appear and produce books, records, papers, or memorandums pertaining thereto and to give testimony or answer interrogatories under oath respecting the same, and the Commissioners shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided then, and in that event, the Commissioners may report that fact to the United States District Court for the District of Columbia, or one of the judges thereof, and said court or any judge thereof hereby is empowered to compel obedience to such summons to the same extent as witnesses may be compelled to obey the subpenas of that court. Any person is custody or control of any books, papers, records, or memorandums bearing upon the matters to which reference is herein made who shall refuse to permit the examination by the Commissioners or any person designated by them of any such books, papers, records, or memorandums, or who shall obstruct or hinder the Commissioners or any person designated by them in the examination of any books, papers, records, or memorandums, shall upon conviction thereof be subject to the penalties provided in this subchapter. (Mar. 2, 1962, 76 Stat. 12, Pub. L. 87–408, § 305.)

EFFECTIVE DATE

See note to section 45–721.

CROSS REFERENCE

For penalty provisions see §§ 45–729, 45–730(c), 45–740, 45–741.

§ 45–726. Recordation—Conditions.

Except as otherwise provided in the subchapter, no deed shall be recorded by the Commissioners until the return required by this subchapter shall have been filed, and the tax imposed by this subchapter shall have been paid. (Mar. 2, 1962, 76 Stat. 13, Pub. L. 87–408, § 306.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–727. Presumptions and burden of proof.

For the purpose of proper administration of this subchapter and to prevent evasion of the tax hereby imposed, it shall be presumed that all deeds are taxable and the burden shall be upon the taxpayer to show that a deed is exempt from tax. (Mar. 2, 1962, 76 Stat. 13, Pub. L. 87–408, § 307.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–728. Deficiencies in tax—Notice of determination—Protests—Hearings—Time for payment.

(a) If a deficiency in tax is determined by the Commissioners, the person liable for the payment thereof shall be notified by registered or certified mail of said determination which shall include a statement of taxes due and given a period of not less than thirty days after such notice is sent in which to file a protest with the Commissioners and show cause or reason why the deficiency should not be paid. If no protest is filed within such thirty-day period, the deficiency as determined by the Commissioners shall be final. If a protest is filed within said period of thirty days, opportunity for hearing thereon shall be granted by the Commissioners, and a final decision thereon shall be made as quickly as practicable and notice of such decision, together with a statement of taxes finally determined to be due, shall be sent by registered or certified mail to the person liable for the payment of the deficiency.

(b) Any deficiency in tax which has become final in accordance with the provisions of subsection (a) of this section shall, if no protest is filed, be due and payable within ten days after the expiration of the thirty-day period provided in subsection (a) of this section or, if a protest is filed, shall be due and payable within ten days after notice of the final decision of the Commissioners upon such protest is sent to the person liable for payment of the deficiency. (Mar. 2, 1962, 76 Stat. 13, Pub. L. 87–408, § 308.)

EFFECTIVE DATE

See note to sections 45–721.

§ 45–729. Penalties and interest—Waiver—Interest on deficiency assessments—Extension of time for payment.

(a) In case of any failure to make and file a correct return as required by this subchapter within the time prescribed by this subchapter or prescribed by the Commissioners in pursuance of this subchapter, 5 per centum of the tax imposed by this subchapter shall be added to such tax for each month or fraction thereof that such failure con-

tinues, not to exceed 25 per centum in the aggregate, except that when a return is filed after such time and it is shown that the failure to file was due to reasonable cause and not due to neglect the Commissioners may in their discretion waive, in whole or in part, the addition to the tax provided by this subsection.

(b) The amount added to any tax under subsection (a) of this section shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of neglect.

(c) Interest upon the amount finally determined as a deficiency shall be assessed at the same time as the deficiency, and shall be collected as a part of the tax, at the rate of one-half of 1 per centum per month or portion of a month, from the date prescribed for the payment of the tax to the date the deficiency is assessed.

(d) If the time for payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended at the rate of one-half of 1 per centum per month or portion of a month for the period of the extension. If a part of the deficiency the time for payment of which is so extended is not paid in full, together with all penalties and interest due thereon, prior to the expiration of the period of the extension, then interest at the rate of one-half of 1 per centum per month or portion of a month shall be added and collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(e) If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency.

(f) If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid.

(g) Where a deficiency, or any interest or additional amounts assessed in connection therewith under subsection (c), (e), or (f) is not paid in full within the time prescribed by this section, there shall be collected as part of the tax interest upon the unpaid amount at the rate of one-half of 1 per centum per month or portion of a month from the date when such unpaid amount was due until it is paid.

(h) The Commissioners are authorized at the request of the taxpayer to extend the time for payment by the taxpayer of the amount of the tax imposed by this subchapter, whether determined as a deficiency or otherwise, for a period not to exceed six months from the date prescribed for the payment of such tax. (Mar. 2, 1962, 76 Stat. 13, Pub. L. 87–408, § 309.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–730. Compromise and settlement—Written agreements for settlement of tax liability—Penalties for illegal acts in connection with compromise agreements—Prosecutions.

(a) Whenever in the opinion of the Commissioners there shall arise with respect of any tax imposed under this subchapter any doubt as to the liability of the taxpayer or the collectibility of the tax for any reason whatsoever, the Commissioners may compromise such tax.

(b) The Commissioners are authorized to enter into a written agreement with any person relating to the liability of such person for payment of the tax imposed under this subchapter. Any such agreement which is approved by the Commissioners and the taxpayer involved, or his authorized agent or representative, shall be final and conclusive and—except upon a showing of fraud, malfeasance, or misrepresentation of a material fact—the case shall not be reopened as to the matters agreed upon or the agreement modified; and in any suit or proceeding relating to the tax liability of the taxpayer such agreement shall not be annulled, modified, set aside, or disregarded.

(c) Any person who, in connection with any compromise under this section or offer of such compromise or in connection with any written agreement under this section or offer to enter into any such agreement, conceals from any officer or employee of the District of Columbia any material fact relating to the tax imposed by this subchapter; destroys, mutilates, or falsifies any books, documents, or record; or makes under oath any false statements relating to the tax imposed by this subchapter shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both. All prosecutions under this section shall be brought in the District of Columbia Court of General Sessions, in the name of the District of Columbia, on information by the Corporation Counsel of the District of Columbia or any of his assistants. (Mar. 2, 1962, 76 Stat. 14, Pub. L. 87–408, § 310; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded Act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

EFFECTIVE DATE

See note to section 45–721.

§ 45–731. Compromise of penalties and adjustment of interest.

The Commissioners shall have the power for cause shown to compromise any penalty which may be imposed under the provisions of this subchapter. The Commissioners may adjust any interest, where, in their opinion, the facts in the case warrant such action. (Mar. 2, 1962, 76 Stat. 15, Pub. L. 87–408, § 311.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–732. Limitations—Time for making assessments—Extension of time by agreement—Suspension of running of period of limitations.

(a) Except as otherwise provided in this section, the amount of any tax imposed by this subchapter

shall be assessed within three years after the deed is recorded by the Commissioners and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

(b) In the case of a false or fraudulent return, with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(c) In case of a willful attempt in any manner to defeat or evade the tax imposed by this subchapter, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(d) In the case of failure to file a return, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(e) Where, before the expiration of the time prescribed in this section for the assessment of the tax imposed by this subchapter, the Commissioners and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(f) The running of the period of limitations provided in this section on the making of assessments, or the collection of the tax imposed by this subchapter in any manner authorized by law, shall be suspended for any period during which the Commissioners are prohibited from making the assessment or from collecting said tax, and for ninety days thereafter: *Provided,* That in any case where a proceeding is commenced by a taxpayer in any court in connection with the tax imposed by this subchapter, the running of the period of limitations shall be suspended for the period of the pendency of such proceeding and for ninety days after the decision of the court shall have become final or, if the proceeding shall have been dismissed or otherwise disposed of, for a period of ninety days after such dismissal or other disposition. (Mar. 2, 1962, 76 Stat. 15, Pub. L. 87–408, § 312.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–733. Administration of oaths.

The Commissioners are authorized to administer oaths and affidavits in relation to any matter or proceeding conducted by them in the exercise of their powers and duties under this subchapter. (Mar. 2, 1962, 76 Stat. 15, Pub. L. 87–408, § 313.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–734. Appeal—Other remedies.

(a) Any person aggrieved by any assessment of a deficiency in tax finally determined by the Commissioners under the provisions of section 45–728 may appeal to the District of Columbia Tax Court in the same manner and to the same extent as set forth in sections 47–2403, 47–2404, 47–2407 to 47–2411, as amended and as the same may hereinafter be amended.

(b) The remedy provided in subsection (a) of this section shall not be deemed to take away from the taxpayer any remedy which he might have under any other provision of law but no suit by the taxpayer for the recovery of any part of the tax imposed shall be instituted or maintained in any court if the taxpayer has elected to file an appeal with respect to such tax, or any part thereof, in accordance with the provisions of subsection (a) of this section. (Mar. 2, 1962, 76 Stat. 15, Pub. L. 87–408 § 314.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–735. Refunds and collection.

The provisions of section 47–2413, and the provisions of section 47–312 and section 47–313 shall be applicable to the tax imposed by this title. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87–408, § 315.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–736. Stamps and other devices for collection of tax.

The Commissioners are authorized to prescribe by regulation such methods or devices, or both, including the use of a stamp or stamps, for the evidencing of payment, and the collection of the taxes imposed by this subchapter, as they may deem necessary and proper for the administration of this subchapter. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87–408, § 316.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–737. Promulgation of rules and regulations.

The Commissioners are hereby authorized to prescribe such rules and regulations as they may deem necessary to carry out the purposes of this subchapter. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87–408, § 317.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–738. Abatement.

The Commissioners are authorized to abate the unpaid portion of any tax due under the provisions of this subchapter, or any liability in respect thereof, if the Commissioners determine under rule or regulation prescribed by them that the administration and collection costs involved would not warrant collection of the amount due. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87–408, § 318.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–739. Elimination of fractional stamps or devices.

For the purpose of avoiding, in the case of any stamps or devices employed pursuant to authority of this subchapter, the issuance of stamps or the employment of devices representing fractional parts of $1, the Commissioners are authorized, in their discretion, to limit the denominations of such stamps or devices to amounts representing $1 or multiples of $1, and to prescribe further that where part of the tax due is a fraction of $1, the tax paid shall be

paid to the nearest dollar. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87–408, § 319.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–740. General criminal penalty—Prosecutions for nonfelonies by corporation counsel—Prosecutions for felonies by United States attorney.

Whoever violates any provision of this subchapter for which no specific penalty is provided, or any of the rules and regulations promulgated under the authority of this subchapter, shall be subject to a fine of not more than $1,000, or to imprisonment of not more than one year, or to both such fine and imprisonment. Prosecutions for violations of this subchapter shall be on information filed in the District of Columbia Court of General Sessions in the name of the District of Columbia by the Corporation Counsel or any of his assistants, except for such violations as are felonies, and prosecutions for such violations as are felonies shall be by the United States attorney in and for the District of Columbia, or any of his assistants. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87–408, § 320; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act July 8, 1963. § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded Act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

EFFECTIVE DATE

See note to section 45–721.

§ 45–741. Criminal penalty as to stamps—Illegal acts relating to stamps.

(1) Any person who, with intent to defraud, alters, forges, makes, or counterfeits any stamp, or other device prescribed under authority of this subchapter for the collection or payment of any tax imposed by this subchapter, or sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, or other device; or

(2) Fraudulently cuts, tears, or removes from any deed, parchment, paper, instrument, writing, or article, upon which any tax is imposed by this subchapter, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this subchapter; or

(3) Fraudulently uses, joins, fixes, or places to, with, or upon any deed, parchment, paper, instrument, writing, or article, upon which a tax is imposed by this subchapter,

(a) any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other deed, parchment, paper, instrument, writing, or article upon which any tax is imposed by this subchapter; or

(b) any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or

(c) any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article; or

(4) (a) Willfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has already been used; or

(b) knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or

(c) knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any deed, parchment, paper, instrument, writing, package, or article,

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than three years, or both. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87–408, § 321.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–742. Disposition of funds.

All moneys collected under this subchapter shall be deposited in the Treasury of the United States to the credit of the general fund of the District of Columbia. (Mar. 2, 1962, 76 Stat. 17, Pub. L. 87–408, § 322.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–743. Separability clause.

If any provision of this subchapter, or the application thereof to any person or circumstances, is held invalid the remainder of this subchapter, and the application of such provision to other persons or circumstances, shall not be affected thereby. (Mar. 2, 1962, 76 Stat. 17, Pub. L. 87–408, § 323.)

EFFECTIVE DATE

See note to section 45–721.

§ 45–744. Appropriations.

There are hereby authorized to be appropriated such amounts as may be necessary for the carrying out of the provisions of this subchapter, including the use of stamps or other devices for evidencing payment of the tax imposed by this subchapter. (Mar. 2, 1962, 76 Stat. 17, Pub. L. 87–408, § 324.)

EFFECTIVE DATE

See note to section 45–721.

Chapter 8.—ESTATES IN LAND

Sec.

45–801. Estates in District.
45–802. Fee simple estates—Estates tail abolished.
45–803. Absolute or qualified.
45–804. Freeholds—Chattels real—Chattel interests.
45–805. Estates pur autre vie.
45–806. Estates classified—Possession—Expectancy.
45–807. Estate in possession.
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45–819. Estates from year to year.
45–820. Estates by sufferance.
45–821. Estates from month to month or from quarter to quarter.
45–822. Estates at will—When terminated.
45–823. Provisions applicable to personal property.

§ 45–801. Estates in District.

Estates in land in the District shall be estates of inheritance, estates for life, estates for years, estates at will, and estates by sufferance. (Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1011.)

CROSS REFERENCE

Statute of frauds, see §§ 28–3501, 28–3503.

NOTES TO DECISIONS

Leaseholds

Leaseholds for a term of years are "estates in land." *Jacobsen* v. *Sweeney* (1953, 202 F. 2d 461, 92 U. S. App. D. C. 93).

Written contract

Agreement for sale of business and leasehold of premises upon which business was conducted, covered an interest in land and was required to be in writing and signed by party to be charged. *Jacobsen* v. *Sweeney* (1953, 202 F. 2d 461, 92 U. S. App. D. C. 939).

§ 45–802. Fee simple estates—Estates tail abolished.

All estates of inheritance, including such as were formerly estates tail, shall be adjudged estates in fee simple. (Mar. 3, 1901, 31 Stat. 1350, ch. 854, § 1012.)

NOTES TO DECISIONS

Fee tail converted into fee-simple estate

Devise created estate tail, and, therefore, under Maryland Act of 1786, converted into fee simple. *Dengel* v. *Brown* (1893, 1 App. D.C. 423).

Devise conveyed fee. *Young* v. *Norris Peters Co.* (1906, 27 App. D.C. 140). See, also, *Atkins* v. *Best* (1906, 27 App. D.C. 148).

Where a will gave to the granddaughter of testatrix real property until she should marry or attain the age of twenty-one years in either of which events, whichever happened first, the property was given to the granddaughter and her children, but if the granddaughter died before she attained the full age of twenty-one years without having been married, or if she married and died without leaving a child or children, then to testatrix' son, and the daughter married at twenty-four, had a son who predeceased her, she took a fee-simple title. *Young* v. *Munsey Trust Co.* (1940, 111 F. 2d 514, 72 App. D.C. 73).

§ 45–803. Absolute or qualified.

An estate in fee simple may be either absolute or qualified, as to one and his heirs during an existing condition of things of uncertain duration. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1013.)

NOTES TO DECISIONS

Recognized fees

Qualified, determinable, or defeasible fees were known at common law and are recognized in the District of Columbia. *Roberds* v. *Markham* (D.C.D.C. 1949, 81 F. Supp. 38).

§ 45–804. Freeholds—Chattels real—Chattel interests.

Estates of inheritance and estates for life shall continue to be denominated freeholds, and estates for years shall be chattels real; estates at will or by sufferance shall be chattel interests, but shall not be liable, as such, to sale under execution; and all estates may be subject to conditions precedent or subsequent. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1014.)

NOTES TO DECISIONS

Distraint and sale

Sale of tenant taxpayer's leasehold interest as chattel was valid. *Stagecrafters' Club Inc.* v. *District of Columbia Division of American Legion* (D.C.D.C. 1953, 110 F. Supp. 481, supplemented 111 F. Supp. 127, affirmed 211 F. 2d 811, 94 U.S. App. D. C. 74).

Interests subject to execution

A leasehold interest in realty for term of years is personal property and subject to execution as such. *Stagecrafters' Club, Inc.* v. *District of Columbia Division of American Legion* (D.C.D.C. 1952, 110 F. Supp. 481, supplemented 111 F. Supp. 127, affirmed 211 F. 2d 811, 94 U.S. App. D. C. 74).

Landlord's consent

Where there was distraint and sale of personal property for federal taxes, leasehold interest distrained and sold passed by operation of law, and, therefore, landlord's approval thereof was not necessary even though lease contained covenant against assignment without landlord's consent. *Stagecrafters' Club, Inc.* v. *District of Columbia Division of American Legion* (D.C.D.C. 1953, 110 F. Supp. 481, supplemented 111 F. Supp. 127, affirmed 211 F. 2d 811, 94 U. S App. D. C. 74).

Leaseholds

Leaseholds for a term of years are "estates in land". *Jacobsen* v. *Sweeney* (1953, 202 F. 2d 461, 92 U. S. App. D. C. 93).

Where lease was forfeited upon tenant's breach of its covenant that it would not use premises for an unlawful purpose, tenant lost all rights under lease, including option to purchase, and, therefore, fact of existence of option provision in lease would not prevent leasehold interest from being distrained and sold as personal property for federal taxes owed by tenant. *Stagecrafters' Club, Inc.* v. *District of Columbia Division of American Legion* (D.C.D.C. 1953, 110 F. Supp. 481, supplemented 111 F. Supp. 127, affirmed 211 F. 2d 811, 94 U. S. App. D. C. 74).

Five year concurrent lease, which had been executed by lessors during continuance of monthly tenancy under prior lease of same premises and simultaneously with assignment of prior lease to new lessees, was chattel real and interest in land, and lease coupled with assignment entitled new lessees to all rents subsequently accruing on prior lease and all remedies available against tenant by his landlord. *Gulf Motors Inc. et ano.* v. *Fenner et ano.* (D. C. Mun. App. 1955, 114 A. 2d 543).

§ 45–805. Estates pur autre vie.

An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee, but after his death it shall be deemed a chattel real and be a part of his personal estate. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1015.)

§ 45–806. Estates classified—Possession—Expectancy.

Estates are either in possession or in expectancy. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1016.)

§ 45–807. Estate in possession.

An estate in possession exists when the owner has an immediate right to the possession of the land. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1017.)

§ 45–808. Estate in expectancy.

An estate in expectancy is either a reversion or a future estate. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1018.)

§ 45–809. Reversions.

A reversion is the residue of an estate left in the grantor who has conveyed, or in the heirs of the devisor who has devised a particular estate less than

his own, and which residue returns to his or their possession on the expiration of the particular estate. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1019.)

§ 45–810. Future estates.

A future estate is one limited to commence at a future day, either without the intervention of a precedent estate or after the expiration or determination of a precedent estate created at the same time and by the same conveyance or devise. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1020.)

§ 45–811. Remainder and conditional limitation.

If it is to commence upon the full expiration of such precedent estate, it is a remainder and may be transferred by that name. If it is to commence on a contingency which, if it happen, will abridge or determine such precedent estate before its expiration, it shall be known as a conditional limitation. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1021.)

CROSS REFERENCE

Proceeding by remainderman to determine whether or not life tenant is still alive, reentry by life tenant, see §§ 16–1151 to 16–1158.

§ 45–812. Vested and contingent future estates.

A future estate is vested when there is a person in being who would have an immediate right to the possession of the land upon the expiration of the intermediate or precedent estate, or upon the arrival of a certain period or event when it is to commence in possession. It is contingent when the person to whom or the event upon which it is limited to take effect in possession or become a vested estate is uncertain. (Mar. 3, 1901, 31 Stat. 1351, ch. 854, § 1022.)

NOTES TO DECISIONS

Adverbs of time construed

"Adverbs of time—as where, there, after, from, etc.—in a devise of a remainder are construed to relate merely to the time of the enjoyment of the estate, and not the time of the vesting in interest." *Green* v. *Gordon* (1912, 38 App. D.C. 443). See, also, *Vogt* v. *Vogt* (1905, 26 App. D.C. 46); *Johnson* v. *Washington Loan & Trust Co.* (1909, 33 App. D.C. 242, affirmed 32 S. Ct. 421, 224 U.S. 224, 56 L. Ed. 741); *Breneman* v. *Herdman* (1910, 35 App. D.C. 27).

Construction

A construction which may lead to intestacy is not favored. *Caine* v. *Payne* (1950, 182 F. 2d 246, 86 U.S. App. D.C. 404, 20 A.L.R. 2d 823, certiorari denied 71 S. Ct. 72, 340 U.S. 855, 95 L. Ed. 626).

Following the material tenor of the language, the use of the words "survivors" or "survivor" refers not to survival at the time of testator's own death, but means survivorship among the nephews at the time of the death of the sister or niece, the immediate precedent beneficiary in point of time. The court must construe the will so that the intent of testator will have vitality. *Id.*

Contingent estate

Where interest devised to grandniece followed a life estate to testator's widow, it was a "remainder," and where it was to become effective only on the death of testator's two daughters without descendants it was a "contingent remainder," and where only one daughter had died without descendants such contingent remainder had not vested, and until it had, the grandniece could take nothing. *Lewis* v. *Cockrell* (D.C.D.C. 1948, 80 F. Supp. 380).

Express or implied terms

Where "the absolute power of disposal was given in express and unequivocal terms, or clearly and unmistakably implied, to the first taker, the remainder over was void." *Montgomery* v. *Brown* (1905, 25 App. D. C. 490).

Interpretation

Adverbs of time, as "after", etc., are to be construed to relate to the time of the enjoyment of the estate and not to the time of vesting of an interest. *District of Columbia* v. *Clark* (1949, 175 F. 2d 821, 84 U.S. App. D.C. 88).

Limitations

In terms of the law of future interests, there are alternative limitations and supplanting limitations. The former requires survival of the remaindermen to the end of the preceding interests. The latter does not necessarily require such survival. It imposes a condition, the happening of which replaces the remaindermen with another. *Scott* v. *Powell* (1950, 182 F. 2d 75, 86 U.S. App. D.C. 277).

Remainder interests taxable

Under the statutory definition of vested interests, the interests herein presented are vested remainders. Simultaneously, the remainder interests are subject to be divested should the remaindermen, or any of them, fail to survive the life estate. Such interests are subject to taxation. *Keep* v. *District of Columbia* (1950, 181 F. 2d 789, 86 U.S. App. D.C. 206).

Substitution of remainderman

Where testatrix devised realty to her sister for life, then to her daughter for life, and then to testatrix's three sons and the issue of the daughter, if any, in fee simple, the issue to take a one-fourth part and if daughter should die without issue then to the three sons, their heirs and assigns forever share and share alike, and in any case, if the three sons should die leaving a descendant or descendants, the descendant or descendants to take the share his, her, or their parent would have taken had he lived, as to one-fourth of property, each designated remainderman took a contingent remainder subject to be divested in event of his death leaving a descendant prior to death of second life tenant, so that son's descendant became substituted remainderman when he died before event which constituted contingency on which his interest depended. *Pyne* v. *Pyne* (1946, 154 F. 2d 297, 81 U.S. App. D.C. 11).

Vested and contingent estates distinguished

Distinction between vested and contingent remainder. *Fields* v. *Gwynn* (1901, 19 App. D.C. 99). See, also, *O'Brien* v. *Dougherty* (1893, 1 App. D.C. 148); *Richardson* v. *Penicks* (1893, 1 App. D.C. 261); *Marshall* v. *Augusta* (1895, 5 App. D.C. 183); *Craig* v. *Rowland* (1897, 10 App. D.C. 402); *Hauptman* v. *Carpenter* (1900, 16 App. D.C. 524); *Green* v. *Gordon* (1912, 38 App. D.C. 443); *Reeves* v. *American Security & Trust Co.* (1940, 115 F. 2d 145, 72 App. D.C. 403, certiorari denied 61 S. Ct. 318, 311 U.S. 710, 85 L. Ed. 461).

Vested estate

Where testator devised his residuary estate to his wife for life and on her death to testator's daughters in fee simple share and share alike and "in the event that either of them be then dead unto the survivor of them", the daughters acquired a "vested interest" and not a "contingent interest" within section 47–1607 which recognizes and taxes separately vested interest and contingent interest. *O'Neill* v. *District of Columbia* (1943, 132 F. 2d 601, 77 U. S. App. D. C. 79).

Where testatrix devised realty to her daughter for life and then to testatrix's three sons and the issue of the daughter, if any, in fee simple, the issue to take a one-fourth part, and directed that, if daughter should die without issue, then to testatrix's three sons, their heirs and assigns forever share and share alike, the sons each had a vested remainder in one-fourth of property and contingent remainder in one-twelfth. *Pyne* v. *Pyne* (1946, 154 F. 2d 297, 81 U.S. App. D.C. 11).

Where testatrix devised realty to her sister for life, then to her daughter for life, and then to testatrix's three sons and the issue of daughter, if any, in fee simple, the issue to take a one-fourth part and, if daughter should die without issue, then to the three sons, their heirs and assigns forever share and share alike, and in any case, if the three sons should die leaving a descendant or descendants, the descendant or descendants to take the share his, her, or their parent would have taken had he lived,

as to three-fourths of property on death of testatrix, each designated remainderman took a vested remainder in fee simple subject to be divested in event of his death leaving a descendant prior to death of second life tenant and upon the event of divestment, the substituted remainderman took the remainder. *Id.*

Under will giving life estate in testamentary trust created therein to testator's stepdaughter, and providing that remainder should be divided, in equal shares, among testator's nephews and nieces listed in will, with the further provision that "the child or children of any one or more of said nephews and nieces deceased taking the parents' share," each nephew and niece named in will, who survived testator, took a "vested remainder interest" upon testator's death, and not a "contingent remainder interest." *American Sec. & Trust Co.* v. *Sullivan* (D.C.D.C. 1947, 72 F. Supp. 925).

A future estate is vested when there is a person in being who would have an immediate right to possession upon the expiration of the intermediate or preceding estate, or upon the arrival of a certain period or event when it is to commence in possession. *District of Columbia* v. *Clark* (1949, 175 F. 2d 821, 84 U.S. App. D.C. 88).

Vested remainders

Where will bequeathed to niece all household furniture, jewelry and other personal property, except cash, and bequeathed to brother all the rest, residue and remainder of estate except that if brother should predecease testatrix or for any other reason could not personally take residue, then it was to go to niece, testatrix's vested remainder in estate subject to life estate, passed to brother who survived testatrix but who along with niece, predeceased life tenant. *Bank of Galesburg etc.* v. *Lawrenson Jr., etc., and Waters etc.* (1956, 240 F. 2d 31, 99 U. S. App. D. C. 345).

There may be vested remainders in equitable estates as well as in legal estates. *District of Columbia* v. *Clark* (1949, 175 F. 2d 821, 84 U.S. App. D.C. 88).

Vesting favored

"The law favors the vesting of estates, and is inclined to treat conditions as subsequent rather than precedent." *Green* v. *Gordon* (1912, 38 App. D.C. 443).

Estates vest at the earliest possible moment, in absence of testamentary intent to contrary. *Id.*

§ 45–813. Alternative future estates.

Two or more future estates may be created to take effect in the alternative, so that if the first in order shall fail to vest the next in succession may be substituted for it and take effect accordingly. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1026.)

§ 45–814. Expectant estates not to be defeated.

No expectant estate can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate, by disseizin, forfeiture, surrender, merger, or otherwise, except when such destruction is expressly provided for or authorized in the creation of such expectant estate; nor shall an expectant estate thus liable to be defeated be on that ground adjudged void in its creation. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1029.)

NOTES TO DECISIONS

Dower rights in expectant estate

This section and § 1030 (§ 45–815) do not change the common-law rule that a widow is not entitled to dower in lands to which her husband had a remainder in fee, if he predeceases the life tenant. *Tolty* v. *Tolty* (1913, 40 App. D. C. 587).

Estate subject to divestment

Where testatrix devised realty to her sister for life, then to her daughter for life, and then to testatrix's three sons and the issue of daughter, if any, in fee simple, the issue to take a one-fourth part and, if daughter should die without issue, then to the three sons, their heirs and assigns forever share and share alike, and in any case, if the three sons should die leaving a descendant or descendants, the descendant or descendants to take the share his, her, or their parent would have taken had he lived, as to three-fourths of property on death of testatrix, each designated remainderman took a vested remainder in fee simple subject to be divested in event of his death leaving a descendant prior to death of second life tenant and upon the event of divestment, the substituted remainderman took the remainder. *Pyne* v. *Pyne* (1946, 154 F. 2d 297, 81 U.S. App. D.C. 11).

Substitution of remainderman

Where testatrix devised realty to her sister for life, then to her daughter for life, and then to testatrix's three sons and the issue of the daughter, if any, in fee simple, the issue to take a one-fourth part and if daughter should die without issue then to the three sons, their heirs and assigns forever share and share alike, and in any case, if the three sons should die leaving a descendant or descendants, the descendant or descendants to take the share his, her, or their parent would have taken had he lived, as to one-fourth of property, each designated remainderman took a contingent remainder subject to be divested in event of his death leaving a descendant prior to death of second life tenant, so that son's descendant became substituted remainderman when he died before event which constituted contingency on which his interest depended. *Pyne* v. *Pyne* (1946, 154 F. 2d 297, 81 U.S. App. D.C. 11).

§ 45–815. Expectant estate descendible and alienable.

Expectant estates shall be descendible, devisable, and alienable in the same manner as estates in possession. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1030.)

NOTES TO DECISIONS

Assignments

Where testatrix devised realty to her daughter for life and then to testatrix's three sons and the issue of the daughter, if any, in fee simple, the issue to take a one-fourth part, and if daughter die without issue then to the three sons, their heirs and assigns forever share and share alike, a son's interests, whether contingent or vested, were assignable, but he could assign only that which he had. *Pyne* v. *Pyne* (1946, 154 F. 2d 297, 81 U.S. App. D.C. 11).

§ 45–816. Tenancies in common and joint tenancies.

Every estate granted or devised to two or more persons in their own right, including estates granted or devised to husband and wife, shall be a tenancy in common, unless expressly declared to be a joint tenancy; but every estate vested in executors or trustees, as such, shall be a joint tenancy, unless otherwise expressed. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1031; June 30, 1902, 32 Stat. 538, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, added "unless otherwise expressed."

NOTES TO DECISIONS

Prior law

Prior to enactment of this section on January 1, 1902, there was in force in District of Columbia a common law rule that a conveyance or devise to two or more persons, whether as a class or by name, without sufficient indication in instrument of intention that they were to hold in severalty, should be construed as creating a joint tenancy and not a tenancy in common. *American Sec. & Trust Co.* v. *Sullivan* (D.C.D.C. 1947, 72 F. Supp. 925).

Construction of conveyance to two or more persons prior to adoption of this code, see *O'Brien* v. *Dougherty* (1893, 1 App. D.C. 148) (devise to a class); *Carroll* v. *Reidy* (1894, 5 App. D.C. 59) (to husband and wife as tenants in common); *Alsop* v. *Fedarwisch* (1896, 9 App. D. C. 408); *Seitz* v. *Seitz* (1897, 11 App. D. C. 358).

Where the death of the testator occurred before the enactment of this code, the common law applied. *Noyes* v. *Parker* (1937, 92 F. 2d 562, 68 App. D.C. 13).

Conveyances to husband and wife, their heirs and assigns forever, prior to adoption of this section, created a tenancy by the entirety, unaffected by the married woman's act. *Blount* v. *United States* (59 Ct. Cl. 328).

Estates by entireties

Where man and woman were disabled from holding property by the entireties because they were not legally married, deed conveying property to them and purporting to create a tenancy by the entireties created, instead, a joint tenancy, not a tenancy in common. *Coleman* v. *Jackson* (C.A.D.C. 1960, 286 F. 2d 98).

Estates by the entireties still exist in the District of Columbia in both personalty and realty. *Flaherty* v. *Columbus* (1914, 41 App. D.C. 525).

This section does not abolish common-law tenancies by entireties. *Settle* v. *Settle* (1926, 8 F. 2d 911, 56 App. D.C. 50, 43 A.L.R. 1079).

Land, which was conveyed to husband and wife as joint tenants, was held by husband and wife as "tenants by the entirety". *Herb* v. *Gerstein* (D.C.D.C. 1941, 41 F. Supp. 634).

Husband was entitled to maintain in his own name a suit against tenant for possession of an apartment in a building which he and his wife had purchased as tenants by the entirety. *Sandler* v. *Wertlieb* (D. C. Mun. App. 1948, 60 A. 2d 222).

Severance of joint tenancy

Under circumstances, execution of deed of trust by daughter as one joint tenant in favor of mother as the second joint tenant did not serve either to "sever" the joint tenancy or establish that a joint tenancy never existed between mother and daughter. *J. Maynard* v. *L. M. Sutherland* (1962, 313 F. 2d 560, 114 U.S. App. D.C. 169).

Joint tenants are free to contract with each other for the use of the common property and even to provide for exclusive use of the property by one of them. *Id.*

Tenancies in common

Statutory presumption that a conveyance to two or more creates a tenancy in common applies only when there is no expression to the contrary in the conveyance. *Coleman* v. *Jackson* (C.A.D.C. 1960, 286 F. 2d 98).

This section providing that a conveyance to two or more should create a tenancy in common unless it expressly declares a joint tenancy does not excuse courts from determining and effecting the intention of the grantor as it appears on the face of the conveyance. *Id.*

This section providing that a conveyance to two or more should create a tenancy in common, unless expressly declared to be a joint tenancy, was intended to reverse the common-law rule that a grant or devise to a number of people, without more, creates a joint tenancy. *Id.*

Where brother and sister were engaged in a joint business venture regarding a piece of property, the title being in her name solely as a matter of convenience, they were in effect tenants in common. *Sheehy* v. *O'Donoghue* (1938, 94 F. 2d 252, 68 App. D.C. 127).

Where testator devises estate to named persons, to be divided equally, those persons take as tenants in common. *Liberty National Bank of Washington* v. *Smoot et al.* (D.C.D.C. 1956, 135 F. Supp. 654).

A tenant in common owns an undivided interest in the property, and such tenants have no separate estate or interest in any distinct portion of the property over which they have simultaneously rights of property, each being interested according to the extent of his share in every part of the whole property and its proceeds. *Deming* v. *Turner* (D.C.D.C. 1946, 63 F. Supp. 220).

Where testamentary trust created by will directing that children of deceased remainderman should take share that parents would have taken was created after January 1, 1902, children of a deceased remainderman took share of their parent as "tenants in common", and not as "joint tenants", and, hence, upon one of the children subsequently dying before life tenant, estate of the deceased child would take same equal share as surviving child or children would take. *American Sec. & Trust Co.* v. *Sullivan* (D.C.D.C. 1947, 72 F. Supp. 925).

§ 45–817. Coparcenary estates abolished.

There shall be no estate in coparcenary in the District, and where two or more persons inherit from an intestate they shall be tenants in common. (Mar. 3, 1901, 31 Stat. 1343, ch. 854, § 956.)

§ 45–818. Estates for years.

An estate for a determined period of time is an estate for years. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1032.)

NOTES TO DECISIONS

Leases

A lease for a term of years creates an estate in the grantee, and the rent reserved may be a lump sum, payable either at the commencement of the term or at its end, subject to such conditions as the lease imposes. *Isquith* v. *Athanas* (D. C. Mun. App. 1943, 33 A. 2d 733).

An ordinary lease of tenancy for years must be certain as to commencement, duration and termination or be capable of being made certain by reference to some collateral event or thing which in itself is certain. *Smith's Transfer & Storage Co.* v. *Hawkins* (D.C. Mun. App. 1947, 50 A. 2d 267).

Where lease provided that it should continue for one year and if at end of that period war of United States with Germany and Japan had not been terminated, lease should continue until "end of war" with Germany and Japan as determined by proclamation of President of United States or by joint resolution of Congress, the lease provided for termination by collateral event which was certain to happen and therefore the lease did not terminate at end of the primary term. *Id.*

§ 45–819. Estates from year to year.

An estate expressed to be from year to year shall be good for one year only. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1033.)

NOTES TO DECISIONS

Holding over

A lease for one year, with a provision that unless the premises are vacated on the day of the expiration of the term, the lessee shall become a tenant for another year, creates a tenancy for one year only, and the tenant holding over becomes a tenant at sufferance. *Morse* v. *Brainerd* (1914, 42 App. D.C. 448). See, also, *Soper* v. *Myers* (1916, 45 App. D.C. 286).

§ 45–820. Estates by sufferance.

All estates which by construction of the courts were estates from year to year at common law, as where a tenant goes into possession and pays rent without an agreement for a term, or where a tenant for years, after the expiration of his term, continues in possession and pays rent and the like, and all verbal hireings by the month or at any specified rate per month, shall be deemed estates by sufferance. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1034; June 30. 1902, 32 Stat. 538, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, substituted "hirelings" for "hirlings."

CROSS REFERENCE

Statute of frauds, see § 28–3501.

NOTES TO DECISIONS

Common law

At common law a "tenant by sufferance" had no estate in premises, was not in privity with landlord, could not maintain action of trespass against landlord, was entitled to no notice to quit, was not liable for rent, and had little more than right to insist he was not trespasser. *Hampton* v. *Mott Motors* (D.C. Mun. App. 1943, 32 A. 2d 247).

At common law, a tenant holding over and paying rent became a "tenant from year to year" and the holding over was impliedly subject to all covenants of expired lease. *Id.*

Court's finding of fact

Unless trial court's finding of fact are clearly erroneous, they cannot be disturbed. *Bass* v. *American Security and Trust Co., Inc.* (D. C. Mun. App. 1956, 124 A. 2d 590).

Creation of new tenancy

Where landlord obtained a judgment which established her right to possession and tenant was granted a stay by the court conditioned upon payment of rent, and thereafter tenant bargained with landlord for additional time upon condition that rent would be paid and that it would be the last extension, tenant could not thereafter assert that landlord had created a new tenancy and had abandoned her right to enforce judgment of possession by accepting rent for the extended period. *Trammel* v. *Estep* (D.C. Mun. App. 1945, 42 A. 2d 501).

Expiration of lease

Where in lease tenant agreed to pay insurance, and paid same beyond term of lease, such payment did not extend the lease and he was tenant by sufferance. *Forster* v. *Eliot* (1922, 282 F. 735, 52 App. D.C. 107).

Tenants in possession of property under a lease which had expired were tenants by sufferance. *Weaver* v. *Koester* (1924, 294 F. 1011, 54 App. D.C. 80).

Tenant under six months' lease becomes tenant by sufferance on its expiration, notice of renewal having been verbal and not written. *National Cafés* v. *Elite Laundry Co.* (1927, 18 F. 2d 828, 57 App. D.C. 178).

Tenant on expiration of one-year lease became tenant by sufferance, and entitled to thirty days' notice to vacate. *Rust Co. v. Drury* (1934, 68 F. 2d 167, 62 App. D.C. 329).

Lessee who occupied commercial property as hold-over tenant after his three years' written lease had expired was a hold-over tenant by sufferance and his tenancy was subject to termination on thirty days' notice. *Lake* v. *Angelo* (D. C. Mun. App. 1960, 163 A. 2d 611).

Even though assignee of expired lease in taking title to property acted solely as agent or straw party for realty corporation, which was seeking to acquire a number of parcels of real estate in neighborhood, assignee was entitled to bring possessory action against lessee, who was hold-over tenant, since lessee could assert any right he had to possession in suit by assignee in same manner that he could have asserted such right if corporation had brought suit. *Id.*

A tenant who remained in possession paying rent after expiration of written lease became a "tenant by sufferance", not within common-law meaning of term, and hence such tenancy could be terminated by either party upon 30 days' notice. *Hampton* v. *Mott Motors* (D.C. Mun. App. 1943, 32 A 2d 247).

The fact that tenant continued in possession of premises after expiration of term lease did not create a "tenancy by sufferance" so as to require landlord to give 30 day notice, where landlord brought action for possession immediately upon expiration of term and continuation in possession was result of temporary injunction order obtained by tenant and landlord rejected rent offered by tenant, notwithstanding landlord accepted damages for wrongful suing out of temporary restraining order. *Bell* v. *Westbrook* (D. C. Mun. App. 1947, 50 A. 2d 264).

The fact that landlord called tenant a "tenant by sufferance" in complaint in action for possession of premises filed immediately upon expiration of term lease, did not create a "tenancy by sufferance" so as to require landlord to first give tenant a 30 day notice since quoted term was a legal conclusion. *Id.*

Lease covenants

A holding over by tenant after expiration of lease is subject to all covenants and terms of original lease applicable to new situation. *Hall* v. *Henry J. Robb, Inc.* (D.C. Mun. App. 1943, 32 A. 2d 707).

Where tenant held over for about 30 months after expiration of written lease, and tenancy could have been terminated on 30 days' notice tenancy created by holding over was impliedly subject to covenant of lease imposing upon tenant liability for cost of needful repairs. *Hampton* v. *Mott Motors* (D.C. Mun. App. 1943, 32 A. 2d 247).

A covenant in a lease against assigning or subletting without landlord's consent is for benefit of landlord because it is regarded as for his interest to determine who shall be his tenant. *Keroes* v. *Westchester Apartments* (D. C. Mun. App. 1944, 36 A. 2d 263).

Liability for rent

Where plaintiff and defendant entered into an oral agreement for the rental of plaintiff's garage at a monthly rate, and defendant vacated garage on first day of August without giving any written notice of his intention to do so, in absence of any waiver by plaintiff, defendant was liable for rent for entire month of August. *Miller* v. *Plumley* (D. C. Mun. App. 1951, 77 A. 2d 173).

Nature of section

This section is mandatory and neither parties nor courts are at liberty to disregard its express policy. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

Part of lease

This section was as much a part of lease which tenant claimed to have renewed by holding over after expiration thereof and paying rent as though this section had been written into lease. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

Payment and acceptance of rent after notice

Although tenant's wife on September 22 informed landlord's office that she and tenant would vacate apartment within 30 days, and also wrote landlord stating that they wished to move by October 1, where tenant paid and landlord accepted rent for October on October 4, even if notice was valid when given, neither landlord nor tenant was bound by it, and when tenant vacated on October 9, tenant vacated without giving required notice. *Williams* v. *Tencher-Walker, Inc.* (D. C. Mun. App. 1956, 125 A. 2d 58).

Renewal of lease

Where lease contained option to renew for additional term upon giving of written notice by lessee, the mailing of an unsigned renewal notice bearing a rubber stamped mark of tenant's trade name, enclosed in an envelope containing tenant's rental check signed by him and also bearing his trade name, was sufficient compliance with requirements of lease. *Worthington* v. *Serkes* (D. C. Mun. App. 1955, 111 A. 2d 877).

Under the rule that an election by tenant to renew a lease should precede or be concurrent with expiration of lease and not depend upon after events except insofar as they may reflect the understanding of the parties with respect to a precedent act, the fact that tenant remained in possession after expiration of lease and paid rent shed little light upon his intention to exercise option to renew, and, in absence of other evidence, such holding over presumptively created a mere tenancy by sufferance. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

Statutory tenancy by sufferance

Statutory tenancy by sufferance is entirely different from common-law tenancy by sufferance, and statutes declaring that certain tenancies are tenancies by sufferance and providing manner of terminating such tenancies are controlling. *Cavalier Apartments Corp.* v. *McMullen* (D.C. Mun. App. 1959, 153 A. 2d 642).

Under this section to effect that all verbal hirings by month shall be deemed estates by sufferance, tenant who rented premises under oral tenancy from month to month was a tenant by sufferance and her tenancy was terminable at any time by notice in writing of her intention to quit on 30th day after date of service of notice. *Id.*

Tenant holding over

Status of lessee upon remaining in possession of leased premises after purchaser's 90-day notice to quit expired was that of hold-over tenant or tenant by sufferance. *Fisher* v. *Parkwood, Inc.* (D.C. App. 1965, 213 A. 2d. 757).

Evidence sustained finding that person, who had been appointed as conservator of tenant's estate had orally agreed, as representative of tenant by sufferance, to pay increased rental for leased premises. *W. E. Summerbell et ano.* v. *W. B. McDonnell, Individually etc.* (D.C. App. 1964, 197 A. 2d 150).

A tenant holding over and paying rent becomes a "tenant by sufferance" in sense only that his tenancy may be terminated by tenant or landlord on 30 days' notice in accordance with section 45–904. *Hampton* v. *Mott Motors* (D.C. Mun. App. 1943, 32 A. 2d 247).

A lapse of two weeks between the expiration of the lease and the filing of the suit is not sufficient to establish a

tenancy by sufferance under the terms of the statute. *Williams* v. *John S. Donohoe & Sons, Inc.* (D. C. Mun. App. 1949, 68 A. 2d 239).

Termination by subletting

Where tenant under verbal hiring by the month removed herself from rented apartment and sublet it to another with landlord's consent for a designated period, after expiration of such period, landlord was entitled to possession of the apartment on ground that tenant was violating "obligation of tenancy" within Emergency Rent Act, § 45–1605 (b). *Keroes* v. *Westchester Apartments* (D. C. Mun. App. 1944, 36 A. 2d 263).

In absence of restrictions, a tenant under lease for definite term may sublet the premises; but, where tenant has only an estate at sufferance, if tenant sublets contrary to landlord's wishes, landlord may terminate the tenancy immediately. *Id.*

Verbal renting by month

This section of the code provides that all verbal hirings by the month, or at any specified rate per month, shall be deemed estates by sufferance. *Boss* v. *Hagan* (1920, 261 F. 254, 49 App. D.C. 106, 8 A.L.R. 1508).

Tenancy under verbal hiring by the month, though deemed a tenancy at sufferance by this section is not an estate at sufferance within strict meaning of the common-law term, but is more in the nature of an estate from month to month, or an estate at will, and until the Emergency Rent Act, § 45–1605 (b), became effective was determinable at any time. *Keroes* v. *Westchester Apartments* (D. C. Mun. App. 1944, 36 A. 2d 263).

Tenant holding apartment under verbal hiring by the month was a "tenant at sufferance". *Westchester Apartments* v. *Keroes* (D.C. Mun. App. 1943, 32 A. 2d 869). See, also, *Keroes* v. *Westchester Apartments* (D.C. Mun. App. 1944, 36 A. 2d 263).

§ 45–821. Estates from month to month or from quarter to quarter.

An estate may be from month to month or from quarter to quarter, or, as otherwise expressed, it may be by the month or by the quarter, if so expressed in writing. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1035.)

NOTES TO DECISIONS

Notice

A "tenancy from month to month" is a tenancy for a month certain plus an expectancy or possibility of continuation for one or more similar periods, and until rightful notice of termination is given this expectancy ripens at the turn of each month to a true tenancy for the ensuing month. *Dorado* v. *Loew's Inc.* (D. C. Mun. App. 1952, 88 A. 2d 188).

§ 45–822. Estates at will—When terminated.

An estate at will is one held by the joint will of lessor and lessee, and which may be terminated at any time, as herein elsewhere provided, by either party; and such estate shall not exist or be created except by express contract: *Provided, however,* That in case of a sale of real estate under mortgage or deed of trust or execution, and a conveyance thereof to the purchaser, the grantor in such mortgage or deed of trust, execution defendant, or those in possession claiming under him, shall be held and construed to be tenants at will, except in the case of a tenant holding under an unexpired lease for years, in writing, antedating the mortgage or deed of trust. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1036, part.)

CODIFICATION

This section is comprised of the first sentence of § 1036 of act Mar. 3, 1901.

CROSS REFERENCE

Forcible entry and detainer, see §§ 16–1501 to 16–1505, 22–3102.

NOTES TO DECISIONS

Construction

Where plaintiff fails to bring defendant within the statutory definition of a tenant at will, he will not prevail. *Spruill* v. *Brooks* (D. C. Mun. App. 1949, 68 A. 2d 204).

Constructive eviction

Where new owner, following foreclosure sale of leased premises, made demand for August rent, tenant was not faced with constructive eviction, which would excuse tenant's nonpayment to landlord of rent which was payable in advance on date prior to foreclosure sale, in view of facts that leasehold interest antedated deed of trust and that tenant remained in possession without interruption under same conditions and terms after foreclosure sale as before. *Hyde* v. *Brandler* (D. C. Mun. App. 1955, 118 A. 2d 398).

Covenant of quiet enjoyment

Where holder of landlord's deed of trust caused trustees to foreclose and became new owner, foreclosure sale did not constitute a breach of covenant of quiet enjoyment, and tenant's payment to new owner of rent past due and payable was at tenant's own risk. *Hyde* v. *Brandler* (D. C. Mun. App. 1955, 118 A. 2d 398).

Lessee after foreclosure

Where plaintiff in acquiring a lease as purchaser under foreclosure did not become a landlord but became a substituted lessee entitled to those rights as tenants which had theretofore belonged to the debtor, no notice to quit to debtor as a condition precedent to the filing of a possessory action was required. *Goody's, Inc.* v. *Stern's Equipment Co.* (D. C. Mun. App. 1954, 110 A. 2d 311).

Lessee of property sold under foreclosure proceedings becomes the tenant of the purchaser. *Bliss* v. *Duncan* (1915, 44 App. D.C. 93).

Notice and time to remove peaceably

Congress did not intend a remedy too expeditious to be fair, and recognized the justice of giving a former owner of real estate, or his tenant, when sold out under a mortgage or deed of trust, a reasonable notice and time peaceably to remove himself and his belongings from the property sold. *Thornhill* v. *Atlantic Life Ins. Co.* (1934, 70 F. 2d 846, 63 App. D.C. 184).

Right to possession

Where plaintiff sued for possession of property purchased at foreclosure sale against defendant who had previously owned the property but had defaulted on the second trust note, the defense that when the deed of trust was foreclosed defendants automatically became tenants at will under this section and could not be ousted by reason of § 45–1605 is not applicable since the property did not constitute housing accommodations within the meaning of § 45–1611. *Surratt* v. *Real Estate Exchange, Inc.* (D. C. Mun. App. 1950, 76 A. 2d 587).

§ 45–823. Provisions applicable to personal property.

All the provisions of this chapter and of sections 45–102 to 45–104, 45–203, 45–204, shall apply to personal property generally except where from the nature of the property they are inapplicable. (Mar. 3, 1901, ch. 854, § 1036, part, as added June 30, 1902, 32 Stat. 538, ch. 1329.)

CODIFICATION

This section is comprised of the second sentence of § 1036 of act Mar. 3, 1901.

Chapter 9.—LANDLORD AND TENANT

Sec.

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45–902. Notices to quit—Month to month.
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§ 45–901. When notice to quit not necessary.

When real estate is leased for a certain term no notice to quit shall be necessary, but the landlord shall be entitled to the possession, without such notice, immediately upon the expiration of the term. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1218.)

CROSS REFERENCE

Proceedings in ejectment apply to landlord and tenant, see § 16–1110.

NOTES TO DECISIONS

Expiration of term

Where tenant was merely continuing in possession after expiration of lease against will of landlord, without payment of rent, tenant was not entitled to notice to quit. *Nickles* v. *Sullivan* (D. C. Mun. App. 1953, 97 A. 2d 920).

When parties contract for a definite lease term no notice to quit need be given when the term expires. *Keuroglian* v. *Wilkins* (D. C. Mun. App. 1952, 88 A. 2d 581).

The fact that landlord who immediately brought at expiration of term lease, an action for recovery of possession of leased premises, accepted damages from tenant for wrongful suing out of order temporarily restraining landlord from further proceeding with the action, did not constitute waiver of landlord's right to sue for recovery of premises. *Bell* v. *Westbrook* (D. C. Mun. App. 1947, 50 A. 2d 264).

Landlord who filed on January 2, 1946, a suit for possession of premises was not required to first give a 30 day notice to quit, notwithstanding term lease expired December 31, 1945, since January 1, 1946, being a legal holiday, this section authorizing recovery of possession without notice immediately upon expiration of term was complied with. *Id.*

Where tenants claimed that landlord did not forcibly evict them from the premises, did not file suit for possession until two weeks after the lease had expired, and that the tenants continued to furnish heat and hot water for entire building, and that these acts created a tenancy by sufferance entitling them to a thirty-day notice to quit, the claims were without merit under the provisions of the statute. *Williams* v. *John S. Donohue & Sons, Inc.* (D. C. Mun. App. 1949, 68 A. 2d 239).

When real estate is leased for a certain term, no notice to quit is necessary and the landlord is entitled to possession immediately upon the expiration of the term. *Alpert* v. *Wolf* (D. C. Mun. App. 1950, 73 A. 2d 525).

Subtenant, notice to

Where lessee of one portion of premises occupied, added space as subtenant of second lessee, and by supplemental agreement with landlord proposed to occupy added space under covenants of original lease if second lessee vacated, and both leases expired before second lessee vacated, and lessor did not recognize lessee as a tenant of added space by accepting rent from him for such space, lessee occupied added space as a subtenant holding over, and since second lessee had no right to a 30 day notice to vacate, his lease having expired, lessee, as subtenant, also was without right to such notice. *Thayer* v. *Brainerd* (D. C. Mun. App. 1946, 47 A. 2d 787).

§ 45–902. Notices to quit—Month to month.

A tenancy from month to month, or from quarter to quarter, may be terminated by a thirty days' notice in writing from the landlord to the tenant to quit, or by such a notice from the tenant to the landlord of his intention to quit, said notice to expire, in either case, on the day of the month from which such tenancy commenced to run. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1219.)

NOTES TO DECISIONS

Assignments

Landlord who without knowledge of dealings between tenant and corporation accepted corporate checks for rent was not thereby bound by transactions between tenant and corporation, and where there was no written assignment of rental agreement with tenant to corporation and landlord had never accepted corporation as a tenant, service of notice on tenant was sufficient to terminate lease as well as sublease expressly made subject thereto. *Haje's, Inc.* v. *Wire* (D. C. Mun. App. 1948, 56 A. 2d 158).

Date notice terminates

While the landlord is not required to specify in the notice the date of the termination of the notice, having done it he is bound by that date. *Merritt* v. *Thompson* (1923, 289 F. 631, 53 App. D.C. 233).

The validity of a notice to quit a month to month tenancy does not depend upon whether the notice expires on a rent day, but upon whether it expires on the day of the month from which the tenancy began to run, thus notice given to expire on the corresponding current date to that of the leasehold origin was valid even though the parties had orally agreed to a change in the date of rental payments. *Ourisman Chevrolet* v. *Zimmelman* (D. C. Mun. App. 1952, 91 A. 2d 709).

Notice of termination of tenancy from month to month cannot be made to expire at time other than end of month, notwithstanding § 45–908 allowing parties to lease to substitute a longer or shorter period of notice than the thirty days which would be otherwise required. *Dorado* v. *Loew's, Inc.* (D. C. Mun. App. 1952, 88 A. 2d 188).

Under lease "by the month" commencing on 20th day of month and providing that lessee would quit premises 24 hours after receiving notice to quit and that he would operate on a 24 hour notice to quit, waiving any and all other notices to quit, and that lessor would rebate any rent paid in advance for period after notice to quit, 24 hour notice served on the 26th of the month was ineffective and notice to be effective had to expire on day of month from which tenancy commenced to run. *Id.*

An agreement whereby property was conveyed to holder of a deed of trust did not affect lease of the premises previously made by owner, but the title taken was subject to the lease, in absence of foreclosure of the deed of trust, even though the lease was not of record, and to terminate the tendency it was necessary that notice to quit expire on the day on which the tenancy commenced to run. *Knowles* v. *Mosher* (D.C. Mun. App. 1946, 45 A. 2d 755).

A landlord is not required to specify, in notice to quit premises leased from month to month date of expiration of notice, but must give notice running for full 30-day period, excluding date of service, and expiring on day of month from which tenancy commenced to run. *Young* v. *Baugh* (D. C. Mun. App. 1944, 35 A. 2d 242, appeal dismissed 39 A. 2d 478).

In fixing time when landlord's notice to tenant to quit leased premises expires, law does not take cognizance of fractions of a day or minute. *Id.*

Description of property

A notice to quit which describes the property in the same manner as in defendant's lease, and which gives more than 30 days' notice, was sufficient. *Bliss* v. *Duncan* (1915, 44 App. D.C. 93).

Dismissal of complaint

In proceeding in landlord and tenant court, where informality of pleading has always been the rule, to recover demised premises on the sole ground that tenancy had been terminated by notice failure of complaint to show that premises were exempt from § 45–1601 et seq. did not require dismissal. *United States* v. *Wittek* (D.C. Mun. App. 1946, 48 A. 2d 805, reversed and remanded 171 F. 2d 8, 83 U.S. App. D.C. 377 reversed and remanded 69 S. Ct. 1108, 337 U.S. 346, 93 L. Ed. 1406).

Where complaint alleged termination of tenancy by notice and sought recovery of demised premises, even if premises were housing accommodations governed by § 45–1601 et seq., it was still possible that plaintiff could have stated a cause of action by alleging that tenants had violated a condition of their tenancy, and proper procedure was to grant motion to dismiss with leave to amend. *Id.*

Due process

Attempted termination of tenancy by United States as landlord for sole reason that tenants refused to sign certification that they were not members of many of certain listed organizations which had been designated by Attorney General either as subversive or as otherwise within Executive Order No. 9835 was arbitrary and violative of due process requirements. *Rudder* v. *United States of America* (1955, 226 F. 2d 51, 96 U. S. App. D. C. 329).

Licensee

Party storing merchandise upon premises by permission but without any lease or agreement as to payment of rent was only permissive occupant and mere licensee, and, as such, not entitled to benefit of rule providing that when landlord gives notice to quit and later accepts rent for new term or part thereof he thereby waives his right to demand possession under notice. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U. S. App. D. C. 114).

Moot questions

When real estate is leased for a certain time, no notice to quit is necessary and the landlord is entitled to possession immediately upon the expiration of the term. It is not the duty of the court to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue. Moreover, it has often been decided where possession of land was involved under an alleged lease that the question becomes moot after the expiration of such lease. *Alpert* v. *Wolf* (D. C. Mun. App. 1950, 73 A. 2d 525).

Purpose of notice

The purpose of this section respecting tenants' notice of intent to vacate rented premises is not to penalize the tenant but to give the opportunity to the landlord to find a new tenant, and where the failure to give notice results in no loss to the landlord, due to reletting, an additional month's rent would penalize the tenant and unjustly enrich the landlord. *First National Realty Corporation* v. *Oliver* (D. C. Mun. App. 1957, 134 A. 2d 325).

Where dwelling house was leased on a monthly basis and after paying the first month's rent in advance, the tenants vacated after ten days without notice, the landlord was not entitled to recover an additional month's rent where due to rerenting, it sustained no loss. *Id.*

Receipt of rent after notice

When landlord gives notice to quit and later accepts rent for new term or part thereof, he thereby waives his right to demand possession under notice, but a landlord's receipt of rent already in arrears merely obviates necessity of entering judgment for that amount and in no way affects landlord's right to judgment for possession. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U. S. App. D. C. 114).

"The receipt of rent by a landlord, after notice to quit, of rent for a new term or part thereof, amounts to a waiver of his right to demand possession under that notice * * *. But the receipt of rent for the current month, pending the notice to quit, cannot have that effect." *Byrne* v. *Morrison* (1905, 25 App. D.C. 72).

Acceptance of rent to November 30 is not a waiver of a notice to quit expiring on December 1. *McCoy* v. *Duehay* (1922, 279 F. 1001, 51 App. D.C. 363). See, also, *Byrne* v. *Morrison* (1905, 25 App. D.C. 72).

A notice to quit served on November 27, 1944, on a monthly tenant whose tenancy ran from the first day of the month would expire January 1, 1945, and acceptance of rent to January 1, 1945, after service of notice would not waive or invalidate such notice. *Moncure* v. *Curry* (D. C. Mun. App. 1945, 42 A. 2d 143).

Whether landlord's agent had authority to accept rent paid after service of notice to quit would be immaterial unless payment was for rent beyond termination date of the notice. *Id.*

The acceptance of rent by landlord from month to month tenant only for a period during the running of notice to quit was not a waiver of such notice. *Pointer* v. *Shepard* (D. C. Mun. App. 1946, 49 A. 2d 659).

Review

In action by landlord against one alleged to be a monthly tenant for possession of realty, appellate court could not pass on validity of defense of acceptance of a month's rent after service of notice to quit in absence of statement of proceedings and evidence showing when tenancy began to run or when notice to quit expired, since acceptance of rent to date of such expiration would not waive or invalidate notice. *Moncure* v. *Curry* (D. C. Mun. App. 1945, 42 A. 2d 143).

Statutory tenancy by sufferance

Statutory tenancy by sufferance is entirely different from common-law tenancy by sufferance, and statutes declaring that certain tenancies are tenancies by sufferance and providing manner of terminating such tenancies are controlling. *Cavalier Apartments Corp.* v. *McMullen* (D.C. Mun. App. 1959, 153 A. 2d 642).

Under this section to effect that all verbal hirings by month shall be deemed estates by sufferance, tenant who rented premises under oral tenancy from month to month was a tenant by sufferance and her tenancy was terminable at any time by notice in writing of her intention to quit on 30th day after date of service of notice. *Id.*

Surrender and acceptance

Whether there has been a surrender of premises by a tenant under a tenancy from month to month and an unqualified acceptance by landlord such as to terminate tenancy and relieve tenant from further liability for rent is generally a question of fact, and mere acceptance of key and reentry for purpose of rerenting does not conclusively establish, as a matter of law, that tenant is relieved from further rent. *Thomas D. Walsh, Inc.* v. *Moore* (D. C. Mun. App. 1958, 141 A. 2d 754).

Termination by United States

Though private landlord can terminate tenancy from month to month by 30 days' notice and recover possession without furnishing reason for termination, United States in its capacity as landlord is still United States and is subject to requirements of due process and may not terminate tenancy arbitrarily. *Rudder* v. *United States of America* (1955, 226 F. 2d 51, 96 U. S. App. D. C. 329).

Thirty-day notice

Thirty-day notice, expiring on the day of the month from which the tenancy is alleged by defendant to run, is sufficient, whether estate be from month to month or by sufferance. *McCoy* v. *Duehay* (1922, 279 F. 1001, 51 App. D.C. 363).

Sundays and half holidays on Saturdays are not excluded in computing the time given in the notice. *Id.*

Notice is not bad because it gives 31 days' notice. *Id.*

A notice dated and served July 1, requiring tenant to vacate on July 31, is insufficient. "By the rule of interpretation, excluding the first day and including the last, there was not full 30 days." *Merritt* v. *Thompson* (1923, 289 F. 631, 53 App. D.C. 233).

Where Congress amended the District of Columbia Emergency Rent Act providing that for housing accommodations rented on January 1, 1941, maximum rent ceiling should be increased to 20 percent above freeze date rental, on filing by landlord with Rent Administrator of a new rent schedule form, tenants were obligated to pay such authorized increase on filing by landlord of his schedule, and tenants were not entitled to 30-day notice. *Stoner* v. *Humphries* (D. C. Mun. App. 1952, 87 A. 2d 528).

Where tenancy by terms of written lease commenced on first day of each month, notice served on June 26, which ordered tenant to quit premises at expiration of 30 days after beginning of her next month's tenancy, complied with this section requiring landlord to give 30 day notice to quit in writing which must expire on day of month from which tenancy begins to run. *Conrad* v. *Pisner* (D. C. Mun. App. 1951, 79 A. 2d 780).

Notices to quit demanding that occupants of houses in federal low rent housing project under month to month tenancies, commencing on first day of each month, vacate houses on or before first day of certain month over thirty days after giving notices, were valid as against contention that they should not have expired until 10th of month because of provisions in rental agreements for payment of rent in advance before 1 p. m. each day between 1st and 10th of each month. *Miller et al.* v. *United States* (D. C. Mun. App. 1951, 77 A. 2d 171).

Where monthly tenancy commenced on December 15, 1942, landlord's notice, dated June 11, 1943, and served on tenant on June 12, directing him to vacate and quit leased premises 30 days after June 15, 1943, and adding that notice expired July 15, 1943, was not defective as commencing after June 15, less than 30 days before July 15. *Klein* v. *Miles* (D. C. Mun. App. 1944, 35 A. 2d 243).

A tenant from month to month is entitled to full 30 days' notice to quit. *Id.*

A landlord's notice to quit, dated and served on month to month tenant June 30, 1943, and demanding that tenant quit leased premises at end of 30 days after beginning of next month's tenancy on July 1, 1943, complied with this section requiring 30 days' written notice to quit, expiring on day of month from which tenancy commenced to run, so as to entitle landlord to possession after August 1, on which date notice expired. *Young* v. *Baugh* (D. C. Mun. App. 1944, 35 A. 2d 242, appeal dismissed 39 A. 2d 478).

A notice to quit served on tenant on or about May 14, 1946, requiring month to month tenant to vacate "on or before" July 1, 1946, was not defective because of use of words "on or before", since notice did not require tenant to quit before July 1. *Gordon* v. *Tino* (D. C. Mun. App. 1947, 50 A. 2d 593).

Where month to month tenancy began on the third of the month, and rent was payable on that day, a notice to quit signed by both landlords, dated and served on October 18, 1946, requiring tenants to vacate premises on the third day of December, 1946, satisfied provision of this section respecting notice to terminate tenancy from month to month. *Wynn* v. *Washington* (D. C. Mun. App. 1947, 53 A. 2d 275).

Thirty days' notice to tenant in defense housing project, written on a letterhead of the National Capital Housing Authority and signed by property manager of project, was sufficient though dispossessory proceedings were brought by the United States, rather than by the Authority. *Wittek* v. *United States* (D.C. Mun. App. 1947, 54 A. 2d 747, reversed on other grounds 171 F. 2d 8, 83 U.S. App. D.C. 377, reversed and remanded on other grounds 69 S. Ct. 1108, 337 U.S. 346, 93 L. Ed. 1406).

With respect to 30-day notice of termination of month to month tenancy, that midnight lying midway between the last day of the terminal month and the first day of the new month must be the termination of the thirtieth day of notice. *Zoby* v. *Kosmadakes* (D. C. Mun. App. 1948, 61 A. 2d 618).

Tenant may be given more than 30 days' notice of termination of month to month tenancy without affecting validity of notice. *Id.*

Where tenant complained that the notice to quit was not in accordance with this section, and the facts show that counting in the usual way from June 1 to July 31 was the sixtieth day, and since the notice required only that the tenant vacate the premises "at the end of" such sixty days, it is clear that the notice gave far more than the thirty days required and fully complied with this section. *Alpert* v. *Wolf* (D. C. Mun. App. 1950, 73 A. 2d 525).

Waiver

In action by landlord against tenant, who took possession as a tenant by the month, to recover a month's rent from tenant, who vacated without giving statutory 30-day notice of his intention to quit, evidence sustained finding that landlord, whose employee took key to premises from tenant without protest and on following day placed rental sign on premises, waived his right to notice. *Thomas D. Walsh, Inc.* v. *Moore* (D. C. Mun. App. 1958, 141 A. 2d 754).

On issue as to whether statutory tenant had, under lease provision, waived right to 30 days' notice by using premises for unlawful purpose, evidence would not sustain finding in favor of landlord. *Dunnington* v. *Thomas E. Jarrell Co.* (D. C. Mun. App. 1953, 96 A. 2d 274).

In landlord's action to recover leased premises, where trial court fixed amount of tenant's appeal bond at certain sum provided that tenant paid all rent in arrears, and continued to pay rent as due until final determination of appeal, acceptance of rent thereafter by landlord waived no rights that he had, and tenant was estopped from raising defense that landlord accepted rent after trial, that such constituted waiver of notice to quit. *Conrad* v. *Pisner* (D. C. Mun. App. 1951, 79 A. 2d 780).

§ 45–903. Tenancy at will—Notice for termination.

A tenancy at will may be terminated by thirty days' notice in writing by either landlord or tenant. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1220.)

NOTES TO DECISIONS

Licensee

Party storing merchandise upon premises by permission but without any lease or agreement as to payment of rent was only permissive occupant and mere licensee, and, as such, not entitled to benefit of rule providing that when landlord gives notice to quit and later accepts rent for new term or part thereof he thereby waives his right to demand possession under notice. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U. S. App. D. C. 114).

Notice to former owner

Congress did not intend a remedy too expeditious to be fair, and recognized the justice of giving a former owner of real estate, or his tenant, when sold out under a mortgage or deed of trust, a reasonable notice and time to peaceably remove himself and his belongings from the property sold. *Thornhill* v. *Atlantic Life Ins. Co.* (1934, 70 F. 2d 846, 63 App. D.C. 184).

Receipt of rent after notice

When landlord gives notice to quit and later accepts rent for new term or part thereof, he thereby waives his right to demand possession under notice, but a landlord's receipt of rent already in arrears merely obviates necessity of entering judgment for that amount and in no

way affects landlord's right to judgment for possession. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U.S. App. D. C. 114).

Unlawful eviction

The eviction of tenant at will without statutory 30-day notice was unlawful and justified award of damages. *Northeast Auto Wreckers* v. *Sanford* (D. C. Mun. App. 1945, 43 A. 2d 292).

§ 45–904. Tenancy by sufferance—When terminated.

A tenancy by sufferance may be terminated at any time by a notice in writing from the landlord to the tenant to quit the premises leased, or by such notice from the tenant to the landlord of his intention to quit on the 30th day after the day of the service of the notice. If such notice expires before any periodical instalment of rent fall due, according to the terms of the tenancy, the landlord shall be entitled to a proportionate part of such instalment to the date fixed for quitting the premises. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1221.)

NOTES TO DECISIONS

Acceptance of rent

Acceptance of rent from lessee by purchaser and continued possession of premises by lessee after 90-day period in notice to quit had run did not revive the lease and did not amount to waiver of cancellation of lease by purchaser as acceptance of rent after lease was cancelled was for use and occupancy during hold-over period. *Fisher* v. *Parkwood, Inc* (D.C. App. 1965, 213 A. 2d 757).

When landlord gives notice to quit and later accepts rent for new term or part thereof, he thereby waives his right to demand possession under notice, but a landlord's receipt of rent already in arrears merely obviates necessity of entering judgment for that amount and in no way effects landlord's right to judgment for possession. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U. S. App. D. C. 114).

Where rental check was sent back and forth several times but was never accepted or redeposited, the question whether these series of events constituted acceptance of the rent and hence that notice to quit became ineffective, was properly submitted to the jury. *Rubenstein* v. *Swagart* (D. C. Mun. App. 1950, 72 A. 2d 690).

Construction with other laws

Prior to enactment of District of Columbia Emergency Rent Act, § 45–1601 et seq., landlord could have evicted tenant by sufferance at any time and without any reason merely by serving on tenant a 30-day notice to quit followed with possessory action but said § 45–1601 et seq., restrict landlord's rights and protect tenant from eviction except on one of grounds specified. *Westchester Apartments* v. *Keroes* (D.C. Mun. App. 1943, 32 A. 2d 869).

A roomer, although a tenant under section 1611 (f) of Title 45, was not a tenant for other purposes, and was not entitled to benefit of this section requiring a notice to quit for termination of a tenancy. *Tamamian* v. *Gabbard* (D. C. Mun. App. 1947, 55 A. 2d 513).

Description of property

Notice to quit, served on tenant at sufferance who had sublet premises for definite period with landlord's consent on ground that tenant was violating obligation of tenancy within § 45–1605 three weeks before any such alleged violation occurred, was premature, and had no anticipatory effect to reach future violations. *Westchester Apartments* v. *Keroes* (D.C. Mun. App. 1943, 32 A. 2d 869).

A tenant who remained in possession paying rent after expiration of written lease became a "tenant by sufferance", not within common-law meaning of term, and hence such tenancy could be terminated by either party upon 30 days' notice. *Hampton* v. *Mott Motors* (D.C. Mun. App. 32 A. 2d 247).

Expiration of notice

An agreement whereby property was conveyed to holder of a deed of trust did not affect lease of the premises previously made by owner, but the title taken was subject to the lease, in absence of foreclosure of the deed of trust, even though the lease was not of record, and to terminate the tenancy it was necessary that notice to quit expire on the day on which the tenancy commenced to run. *Knowles* v. *Mosher* (D. C. Mun. App. 1946, 45 A. 2d 755).

Holding over

Lessee who occupied commercial property as hold-over tenant after his three years' written lease had expired was a hold-over tenant by sufferance and his tenancy was subject to termination on thirty days' notice. *Lake* v. *Angelo* (D.C. Mun. App. 1960, 163 A. 2d 611).

Even though assignee of expired lease in taking title to property acted solely as agent or straw party for realty corporation, which was seeking to acquire a number of parcels of real estate in neighborhood, assignee was entitled to bring possessory action against lessee, who was hold-over tenant, since lessee could assert any right he had to possession in suit by assignee in same manner that he could have asserted such right if corporation had brought suit. *Id.*

Tenant continuing in possession and paying rent under an expired lease becomes a tenant at sufferance and such tenancy is impliedly subject to the provisions of the expired lease. *Friedman* v. *Sherman* (D. C. Mun. App. 1950, 74 A. 2d 57).

Improvements

Where tenant of a row house, shortly before expiration of five-year lease, made improvements on the property at a cost of more than $200, but the only improvement landlord was cognizant of was the painting of front porch by tenant, such repairs were not sufficient to have bound tenant for a renewal term of five years, and hence did not constitute notice to landlord that tenant was exercising option contained in lease to renew for a five-year period, and landlord was at liberty, after expiration of lease, to terminate the tenancy and recover possession for landlord's personal occupancy. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

Licensee

Party storing merchandise upon premises by permission but without any lease or agreement as to payment of rent was only permissive occupant and mere licensee, and, as such, not entitled to benefit of rule providing that when landlord gives notice to quit and later accepts rent for new term or part thereof he thereby waives his right to demand possession under notice. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U. S. App. D. C. 114).

Master and servant relationship

Where the servant was to do certain work, and while performing the same he was to occupy the premises without charge, the relationship was master and servant, not landlord and tenant. *Turner* v. *Mertz* (1925, 3 F. 2d 348, 55 App. D.C. 177, 39 A.L.R. 1140).

Notice generally

Tenancy of lessee after expiration of purchaser's 90-day notice to quit was subject to termination on 30 days' notice to quit and 30-day notice given by purchaser was effective. *Fisher* v. *Parkwood, Inc.* (D.C. App. 1965, 213 A. 2d 757).

A notice to terminate a tenancy by sufferance is sufficient which requires tenant to quit "at the end of 30 days from the date of service" upon him, instead of on the thirtieth day thereafter. *Hayden* v. *Filippone* (1922, 278 F. 329, 51 App. D.C. 246).

A landlord's notice to quit to tenant by sufferance, stating that notice expired on 30th day after day of service of notice, substantially complied with this section. *Globe Clothing Shop* v. *Skolnick* (D.C. Mun. App. 1947, 50 A. 2d 271).

A notice to tenant by sufferance to quit addressed to "Globe Clothing Shop" was not defective for failure to designate tenant as corporation, partnership, or individual, where notice was personally served on tenant and tenant was not misled by notice. *Id.*

To terminate a tenancy by sufferance, landlord must give tenant a 30-day notice to vacate, but such notice does not need to assign any reason. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

Where tenant held over after expiration of lease and landlord desired premises for personal occupancy, 30-day

notice to vacate was sufficient to terminate the tenancy notwithstanding that notice did not specify any one of the several grounds which, under the Emergency Rent Control Act, § 45–1605, are made conditions to the right of a landlord to regain possession of residential property. *Id.*

Where one-year lease of rooming house gave lessor or his assignee right to terminate lease if property was sold during term of lease by giving lessee 90-days notice, it unambiguously provided for 90 days notice only during year lease was in effect, and tenant by holding over and paying rent after lease expired became "tenant by sufferance" and was entitled only to the usual 30-day notice. *Arsenault* v. *Angle* (D. C. Mun. App. 1945, 43 A. 2d 709).

Where landlord gave tenant permission to install an air cooling system for leased premises and thereafter gave tenant "permission to use" certain space not covered by lease for purpose of installing parts of the air cooling machinery, the language used did not create a "tenancy by sufferance" so as to require landlord to give tenant a 30 day notice to quit after expiration of lease with respect to the space permissively used. *Thayer* v. *Brainerd* (D. C. Mun. App. 1946, 47 A. 2d 787).

Where evidence was insufficient to establish that tenant had any special form of lease, he was merely a tenant at sufferance, and a notice to quit which expired 30 days from December 20 was valid although tenancy commenced on first of the month. *Sandler* v. *Wertlieb* (D. C. Mun. App. 1948, 60 A. 2d 222).

Notice in writing

A notice served on tenant personally, wherein he is described as "Wm." instead of Richard, and giving him the required length of time in which to vacate is sufficient under this section. "The proceedings in landlord and tenant cases are informal, and if the substantial rights of both parties are preserved, a departure from strict procedure may be ignored." *Creel* v. *Adams* (1920, 265 F. 456, 49 App. D.C. 306).

To terminate a tenancy by sufferance, notice in writing must be given. *Beyer* v. *Smith* (1929, 32 F. 2d 423, 59 App. D.C. 32, certiorari denied 50 S. Ct. 17, 280 U.S. 557, 74 L. Ed. 613).

Payment and acceptance of rent after notice

Although tenant's wife on September 22 informed landlord's office that she and tenant would vacate apartment within 30 days, and also wrote landlord stating that they wished to move by October 1, where tenant paid and landlord accepted rent for October on October 4, even if notice was valid when given, neither landlord nor tenant was bound by it, and when tenant vacated on October 9, tenant vacated without giving required notice. *Williams* v. *Tencher-Walker Inc.* (D. C. Mun. App. 1956, 125 A. 2d 58).

Purpose of notice

The purpose of a thirty days' notice to quit is to terminate a tenancy and upon the expiration of the time fixed in the notice to quit, the tenancy no longer exists *Rubenstein* v. *Swagart* (D. C. Mun. App. 1950, 72 A. 2d 690).

Property used for business purposes

Where plaintiff served defendant notice to quit using language of statute, and said also, "The said premises being necessary for me for my immediate personal occupancy"; such notice is sufficient whether the property was being used for business purposes or not. *Weaver* v *Koester* (1924, 294 F. 1011, 54 App. D.C. 80).

Roomers and boarders

Evidence in eviction proceeding supported finding that defendant was a roomer, rather than a tenant, and thus subject to eviction by summary proceeding. *Levy* v. *Parks et ano.* (D.C. Mun. App. 1960, 157 A. 2d 462).

Statutory tenancy by sufferance

Statutory tenancy by sufferance is entirely different from common-law tenancy by sufferance, and statutes declaring that certain tenancies are tenancies by sufferance and providing manner of terminating such tenancies are controlling. *Cavalier Apartments Corp.* v. *McMullen* (D.C. Mun. App. 1959, 153 A. 2d 642).

Under § 45–820, to effect that all verbal hirings by month shall be deemed estates by sufferance, tenant who rented premises under oral tenancy from month to month was a tenant by sufferance and her tenancy was terminable at any time by notice in writing of her intention to quit on 30th day after date of service of notice. *Id.*

Stay of proceedings by payment

The principle, that tenant should be relieved from forfeiture by stay of proceedings upon payment of rent due before or after judgment, applies only in situations where tenant under unexpired lease fails to pay rent and his landlord sues for possession because of default, but, in such circumstances, if tenant pays arrears with interest and costs, lease is again in full vigor and he is entitled to retain possession for remainder of unexpired term. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U. S. App. D. C. 114.)

In landowner's action to recover possession and fair amount as rental from person in possession of property without right, it was error to permanently stay judgment for possession upon payment by defendant of amount adjudged to be due as rental. *Id.*

Surrender without notice

Where plaintiff and defendant entered into an oral agreement for the rental of plaintiff's garage at a monthly rate, and defendant vacated garage on first day of August without giving any written notice of his intention to do so, in absence of any waiver by plaintiff, defendant was liable for rent for entire month of August. *Miller* v. *Plumley* (D. C. Mun. App. 1951, 77 A. 2d 173).

Waiver of possession

The receipt of rent by a landlord for a new term or parts thereof after service of a notice to quit amounts to a waiver of his rights to demand possession under the notice. *Christopher* v. *Shapiro* (D. C. Mun. App. 1950, 76 A. 2d 781).

§ 45–905. Notice not to be recalled.

Neither landlord nor tenant, after giving notice as aforesaid, shall be entitled to recall the notice so given without the consent of the other party, but after the expiration of the notice given by the landlord as aforesaid the landlord shall be entitled to the possession as if he had given the proper notice to quit; and after the expiration of the notice given by the landlord as aforesaid the tenant shall be entitled to quit as if he had given the proper notice of his intention to quit. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1222; June 30, 1902, 32 Stat. 542, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, inserted "he" after "be entitled to quit as if."

§ 45–906. Service of notice.

Every notice to the tenant to quit shall be served upon him personally, if he can be found, and if he can not be found it shall be sufficient service of said notice to deliver the same to some person of proper age upon the premises, and in the absence of such tenant or person to post the same in some conspicuous place upon the leased premises. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1223.)

NOTES TO DECISIONS

Generally

A notice to quit leased premises is without judicial effect unless followed by court action. *Fisher* v. *Parkwood, Inc.* (D.C. App. 1965, 213 A. 2d 757).

The same exactness is not required in the serving of a notice to quit as in the serving of a summons in a landlord and tenant action. *N. Custis* v. *S. Klein* (D.C. Mun. App. 1962, 177 A. 2d 268).

Where one of the landlords personally handed month to month tenant a 30-day notice to quit, there was good service notwithstanding that tenant, after reading notice, stated she would not accept it and handed it back. *Pointer* v. *Shepard* (D. C. Mun. App. 1946, 49 A. 2d 659).

Service of notice to quit upon tenant need not be made by landlord in person but may be made by any person

acting for landlord so long as tenant receives notice in time to allow him the statutory period to vacate, the same exactness not being required in serving such a notice as in serving a summons. *Craig* v. *Heil* (D. C. Mun. App. 1946, 47 A. 2d 871).

Deputy marshal was entitled to make the service upon the person obviously in charge of the premises, particularly when that person told him he was authorized by the tenant to accept service. *Rubenstein* v. *Swagart* (D. C. Mun. App. 1950, 72 A. 2d 690).

This section describes the manner in which a notice to quit must be served to constitute valid service in this jurisdiction. There is nothing which requires that the landlord in person, or an officer, shall make the service. It may be made by any person acting for the landlord. *Glenn* v. *Mindell* (D. C. Mun. App. 1950, 74 A. 2d 835).

Where appellant argues that the party who actually made the service should have been produced and that in his absence testimony was incompetent, the argument is completely without substance in the absence of a statute or decision which requires such mode of proof. *Id.*

Delivery to adult

Where one of the landlords went to rented dwelling and inquired for month to month tenant, and, upon being told that she was not at home, delivered 30-day notice to quit to an adult person who came to the door, there was good service of such notice. *Pointer* v. *Shepard* (D. C. Mun. App. 1946, 49 A. 2d 659).

Delivery to minor son

A notice delivered by landlord to tenant's son, 17 years of age, at her request, and the same delivered to her by the boy, is served substantially in compliance with this section. *Hockman* v. *Shreve* (1921, 269 F. 482, 50 App. D.C. 140).

Delivery to tenant's wife

A landlord left notice to quit with tenant's wife, with a request that she deliver it to him, which was done. "There is nothing in this (section) which requires that the landlord in person or an officer shall make the service. It may be made by any person acting for the landlord. In this case the wife, at the request of the landlord, handed the notice to the tenant, and thus he was personally served. * * * In the case of a notice to quit, service by any person is enough, so long as the tenant receives the notice in time to allow the statutory period of vacate." *Hardebeck* v. *Hamilton* (1921, 268 F. 703, 50 App. D.C. 113).

Where defendant was not present at his place of business when marshal went there to serve summons and complaint, and marshal was informed by defendant's wife that defendant was not there, marshal properly left copies with wife and it was not necessary that marshal make second visit in attempt to make personal service. *Lake* v. *Angelo* (D.C. Mun. App. 1960, 163 A. 2d 611).

Posting on premises

Where attempt was made at 10:30 p. m. to serve on tenant a notice to quit and another attempt was made at 11 p. m. same evening, and an earlier attempt would have proved unsuccessful and notice to quit was tacked on door of premises, service of notice was sufficient. *Lynch* v. *Bernstein* (D. C. Mun. App. 1946, 48 A. 2d 467)

Registered mail

Landlord could select Post Office Department as his delivering agent for service of a notice to quit upon tenant by the employment of registered mail, prescribing delivery to addressee only with demand for a return receipt, so long as such method resulted in notice being served personally upon tenant. *Craig* v. *Heil* (D. C. Mun. App. 1946, 47 A. 2d 871).

§ 45–907. Refusal to quit, double rent.

If the tenant, after having given notice of his intention to quit as aforesaid, shall refuse, without reasonable excuse, to surrender possession according to such notice, he shall be liable to the landlord for rent at double the rate of rent payable according to the terms of tenancy for all the time that the tenant shall so wrongfully hold over, to be recovered in the same way as the rent accruing before the termination of the tenancy. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1224.)

NOTES TO DECISIONS

Evidence

Evidence in landlord's suit for double rent supported finding that tenants had not refused to surrender possession without reasonable excuse in accordance with notice to quit. *J. F. Paton* v. *J. C. Rose and A. L. Rose* (D.C. App. 1964, 205 A. 2d 609).

There was no initiation of criminal proceeding, to support suit for malicious prosecution, where there was no warrant issued and no formal papers filed charging offense, but merely hearing scheduled by assistant corporation counsel to discuss complaint, at conclusion of which complaint was dropped. *Id.*

§ 45–908. Agreement as to notice.

Nothing herein contained shall be construed as preventing the parties to a lease, by agreement in writing, from substituting a longer or shorter notice to quit than is above provided or to waive all such notice. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1236.)

NOTES TO DECISIONS

Generally

Under lease "by the month" commencing on 20th day of month and providing that lessee would quit premises 24 hours after receiving notice to quit and that he would operate on a 24 hour notice to quit, waiving any and all other notices to quit, and that lessor would rebate any rent paid in advance for period after notice to quit, 24 hour notice served on the 26th of the month was ineffective and notice to be effective had to expire on day of month from which tenancy commenced to run. *Dorado* v. *Loew's, Inc.* (D. C. Mun. App. 1952, 88 A. 2d 188).

Provision of lease that tenant, if not in default, was entitled to not less than 30 days' notice to vacate, which notice was to be given, in writing, at least 30 days before the tenancy was intended to be terminated, was a valid contract substitution for § 45–902 pertaining to notice to terminate a tenancy from month to month. *Zoby* v. *Kosmadakes* (D.C. Mun. App. 1948, 61 A. 2d 618).

Waiver of notice

Defendant agreed that in the event he should not pay the rent when due he should not be entitled to any notice to quit, the usual thirty days' notice being expressly waived; such contract was specifically authorized by this section. *Rust Co.* v. *Drury* (1934, 68 F. 2d 167, 62 App. D.C. 329).

A notice to quit is a condition precedent to the filing of an action by landlord to obtain premises from tenant but is not jurisdictional and may be waived when tenancy is created or at any later time. *Morris* v. *Breaker* (D. C. Mun. App. 1944, 38 A. 2d 632). See, also, *Craig* v. *Heil* D.C. Mun. App. 1946, 47 A. 2d 871).

In landlord's action to recover premises from tenant where tenant testified that she had waived service of a notice to quit, tenant waived defense of failure of landlord to serve such notice. *Morris* v. *Breaker* (D. C. Mun. App. 1944, 38 A. 2d 632).

In landlord's action to recover premises, landlord's failure to give notice to quit is not an automatic defense and can be waived or relinquished. *Id.*

Where lease provided that no notice to quit should be necessary if default in rent occurred, but in landlord's suit for possession, a confession of judgment and stipulation was filed permitting tenant to continue in possession and providing a new method of rent payment, the lease, including the waiver clause, remained in force and tenant was not entitled to a 30-day notice to quit before a new suit for possession could be filed against him. *Klein* v. *Insurance Bldg.* (D.C. Mun. App. 1946, 46 A. 2d 368)

Where in District of Columbia Municipal Court question whether 30 days' notice to quit had been waived by tenant was raised by pleadings but no evidence of waiver was adduced at trial, tenant's failure to call absence of proof to trial court's attention was equivalent to waiver or at least waiver of proof of notice. *Zindler* v. *Buchanon* (D. C. Mun. App. 1948, 61 A. 2d 616).

§ 45–909. Recovery of real and personal property leased together.

Whenever real and personal property shall be leased together, as, for example, a house with the furniture contained therein, the landlord, either in an action of ejectment or in the summary proceeding for possession, before the District of Columbia Court of General Sessions provided for in sections 11–701 to 11–749 may have a judgment for recovery of the personalty as well as for the recovery of the realty. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1235; Feb. 17, 1909, 35 Stat. 623, ch. 134; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

REFERENCES IN TEXT

Sections 11–701 to 11–749, referred to in this section, were repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), in the general revision of Part II of this Code, and are now covered by various sections and chapters in Titles 11 and 13–17. The summary proceedings referred to presumably have reference to the provision relating to forcible entry and detainer, which are now covered by § 16–1501 et seq.

CHANGE OF NAME

"Municipal court" was substituted for "justice of the peace" to conform to act Feb. 17, 1909.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 45–910. Ejectment or summary proceedings.

Whenever a lease for any definite term shall expire, or any tenancy shall be terminated by notice as aforesaid, and the tenant shall fail or refuse to surrender possession of the leased premises, the landlord may bring an action of ejectment to recover possession in the United States District Court for the District of Columbia; or the landlord may bring an action to recover possession before the District of Columbia Court of General Sessions, as provided in sections 11–701 to 11–749. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1225; Feb. 17, 1909, 35 Stat. 623, ch. 134, June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

REFERENCES IN TEXT

Sections 11–701 to 11–749, referred to in this section, were repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), in the general revision of Part II of this Code, and are now covered by various sections and chapters in Titles 11 and 13—17. Provisions relating to forcible entry and detainer proceedings in District of Columbia Court of General Sessions to recover possession are now covered by § 16–1501 et seq.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

"Municipal court" was substituted for "justice of the peace" to conform to act Feb. 17, 1909.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

NOTES TO DECISIONS

Conforming pleadings to proof

Where only issue as to right of possession raised and tried in landowner's action against occupant was whether parties had intended lease of adjacent lot to cover also the premises in issue, and it appeared that occupant was not entitled to possession, although his entry had been lawful, landowner was not concluded by his allegation describing occupant as a "tenant by sufferance", in view of fact that complaint also alleged that occupant held "without right"; and if there was any doubt in trial judge's mind as to sufficiency of complaint as one in ejectment, it was his duty to permit plaintiff to amend by withdrawing allegations concerning tenancy by sufferance and clearly stating cause of action in ejectment in conformity with facts. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U. S. App. D. C. 114).

Continuing breach of lease

Keeping the same dog in leased apartment with knowledge of landlord from beginning of tenancy and for nearly five years thereafter would not constitute a continuing breach. *Stewart* v. *Shannon & Luchs Co.* (D. C. Mun. App. 1946, 46 A. 2d 863).

Due process

Attempted termination of tenancy by United States as landlord for sole reason that tenants refused to sign certification that they were not members of many of certain listed organizations which had been designated by Attorney General either as subversive or as otherwise within Executive Order No. 9835 was arbitrary and violative of due process requirements. *Rudder* v. *United States of America* (1955, 226 F. 2d 51, 96 U. S. App. D. C. 329).

Though private landlord can terminate tenancy from month to month by 30 days' notice and recover possession without furnishing reason for termination, United States in its capacity as landlord is still United States and is subject to requirements of due process and may not terminate tenancy arbitrarily. *Id.*

Emergency rent control

The effect of Emergency Rent Control Act, § 45–1605, restricting landlord's right to recover possession of housing accommodations is to create a noncontractual statutory right of possession in tenant, continuing at his option beyond expiration of his lease or rental agreement by depriving landlord, unless he claims under one of the permitted grounds, of right to maintain an action for possession. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

Under the Emergency Rent Control Act, § 45–1605, the procedure in landlord's action against tenant for possession of premises, except for restrictions as to grounds upon which landlord may claim right of possession, remains the same as it was previously. *Id.*

Estoppel

Where defendant in ejectment action claimed right of possession under lease from plaintiff, he was thereby estopped to deny plaintiff's title. *Shapiro* v. *Christopher* (1952, 195 F. 2d 785, 90 U. S. App. D. C. 114).

Evidence

In landlord's action to recover possession of storeroom from tenant after expiration of lease, testimony as to landlord's reasons for seeking of possession was inadmissible. *Fowel* v. *Continental Life Ins. Co.* (D. C. Mun. App. 1947, 55 A. 2d 205).

Improvements

Where tenant of a row house, shortly before expiration of five-year lease, made improvements on the property at a cost of more than $200, but the only improvement landlord was cognizant of was the painting of front porch by tenant, such repairs were not sufficient to have bound tenant for a renewal term of five years, and hence did not constitute notice to landlord that tenant was exercising option contained in lease to renew for a five-year period, and landlord was at liberty, after expiration of lease, to terminate the tenancy and recover possession for landlord's personal occupancy. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

Jurisdiction

Jurisdiction of the municipal court over summary suits to recover possession of real property under this section is limited explicitly to actions by landlord against tenant. *Spruill* v. *Brooke* (D. C. Mun. App. 1949, 68 A. 2d 204).

Nonpayment of rent

A landlord could not dispossess tenant for nonpayment of rent and at the same time collect rent from tenant for period extending beyond time of filing of action. *Gunn* v. *Brown* (D. C. Mun. App. 1948, 59 A. 2d 518).

Notice to former owner

Congress did not intend a remedy too expeditious to be fair, and recognized the justice of giving a former owner of real estate, or his tenant, when sold out under a mortgage or deed of trust, a reasonable notice and time to peaceably remove himself and his belongings from the property sold. *Thornhill* v. *Atlantic Life Ins. Co.* (1934, 70 F. 2d 846, 63 App. D.C. 184).

Parties

Where tenant terminated his tenancy by notice acceptable to landlord but tenant's estranged wife remained in possession of premises, landlord's action to recover possession of premises was properly brought against the tenant and it was not necessary that the tenant's estranged wife, who was not a party to lease, should be named as defendant. *Scott* v. *H. G. Smithy Co.* (D. C. Mun. App. 1947, 53 A. 2d 45).

Persons bound by judgment

Where owners of building, who had received from former landlord assignments in blank of various leases, directed that blanks be filled up in name of owners' building manager, thereby making him landlord, a judgment in a possessory action by manager against a tenant would be binding on owners. *Koehne* v. *Harvey* (D. C. Mun. App. 1946, 45 A. 2d 780).

Questions for jury

In action by landlord for possession of leased apartment, tenant's testimony that prior to execution of lease, the landlord through its agent knew that tenant intended keeping dog on premises and assured tenant that it would be all right, that from beginning of tenancy and for nearly five years dog was kept on premises with knowledge of landlord who without objection accepted rent during that time, raised issue for jury of whether landlord had waived covenant in lease against keeping animals in apartment. *Stewart* v. *Shannon & Luchs Co.* (D. C. Mun. App. 1946, 46 A. 2d 863).

Evidence showing the circumstances surrounding the signing of the lease should have been admitted, at least tentatively, by the trial judge in order for him to determine whether such evidence should have gone before the jury. *Newlin* v. *Weaver Brothers* (D. C. Mun. App. 1949, 69 A. 2d 500, rehearing denied 70 A. 2d 61, affirmed 74 A. 2d 65).

Where in an action on the breach of a lease on the ground that tenant had kept a dog in violation of the lease, a question of fact for the jury was presented where tenant claims as evidence of the waiver of the breach that the landlord accepted rent with the knowledge that a dog was being kept by the tenant. *Id.*

Real party in interest

Where leases were assigned to manager of building as landlord under express instructions of owners of building, in light of this section giving landlord right to sue for possession and in light of holding that manager was real landlord, manager was "real party in interest" within meaning of rule 17a restricting right to maintain suit to real party in interest. *Koehne* v. *Harvey* (D. C. Mun. App. 1946, 45 A. 2d 780).

Waiver of covenant

Though oral testimony may not be used to vary the terms of a written lease, such testimony is admissible on the question of whether a written covenant has been waived by an oral estoppel or some other act inconsistent with reliance upon the covenant. *Newlin* v. *Weaver Brothers, Inc.* (D. C. Mun. App. 1949, 69 A. 2d 500, rehearing denied 70 A. 2d 61, affirmed 74 A. 2d 65).

Withdrawal of permission

Where lease prohibited keeping of dogs in apartment but landlord conditionally granted tenants permission to keep dog subject to withdrawal if other tenants complained, tenants' refusal to remove dog when permission was withdrawn entitled landlord to recover possession. *Shay* v. *Randall H. Hagner & Co.* (D.C. Mun. App. 1943, 34 A. 2d 358).

Where lease contained covenant prohibiting keeping of dogs, and provided that waiver of breach of covenant could not be construed as waiver of covenant, even though landlord conditionally granted permission to tenants to keep dog, the covenant was not waived and could be enforced by action for possession of premises on withdrawal of permission. *Id.*

§ 45–911. Arrears of rent and double rent.

In either case the landlord may join with his claim for recovery of the possession of the leased premises a claim for all arrears of rent accrued to the termination of the tenancy, and, when the tenant has given the notice, for double rent from the termination of the tenancy to the verdict, or judgment, if the trial be by the court and for damages for waste: *Provided,* That in such action before the District of Columbia Court of General Sessions the amount so claimed shall be within its jurisdiction. If judgment for possession be rendered in favor of the plaintiff, he shall be entitled, at the same time, to a judgment for said arrears of rent, and for said double rent, as the case may be, to the date of the verdict or judgment as aforesaid, and for damages for waste. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1226; June 30, 1902, 32 Stat. 542, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

AMENDMENT

1902—Act June 30, 1902, deleted "for possession" following "by the court."

CHANGE OF NAME

"Municipal court" was substituted for "justice of the peace" to conform to act Feb. 17, 1909.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

NOTES TO DECISIONS

Lessee breaching covenant

Where lessee had breached covenant against subletting and lessor returned check for rent payment but lessee had continued in possession, lessor was entitled to a judgment for possession and rent. *Merrit* v. *Kay* (1924, 295 F. 973, 54 App. D.C. 152).

Liability for rent

Rent as it fell due became a debt which tenant was bound to pay unless the parties entered into a contrary agreement supported by consideration. *Crowder* v. *Lackey* (D. C. Mun. App. 1946, 46 A. 2d 699).

In an action for rent, in the absence of warranty, deceit, or fraud, the tenant has the duty to examine the premises and determine its adaptability for the desired use and there is no duty on the part of the landlord to ascertain the weight of a particular type of a machine which defendant desires to install on the premises. *Soresi* v. *Repetti* (D. C. Mun. App. 1950, 76 A. 2d 585).

Money judgment

Under this section providing that landlord may join with his claim for recovery of possession of leased premises a claim for arrears of rent, recovery of money judgment is incidental to basic action for possession, the two claims are separate and distinct, and landlord is not required to join claims, but may sue for rent in separate action. *Paregol* v. *Smith* (D.C. Mun. App. 1954, 103 A. 2d 576).

The recovery of a money judgment for rent in landlord's action for possession of leased premises on ground of nonpayment of rent is but incidental to the main

action, which remains basically one for possession. *Shipley* v. *Major* (D. C. Mun. App. 1945, 44 A. 2d 540).

Pleading

Under this section providing that landlord may join with claim for recovery of possession of leased premises a claim for arrears of rent, claim for rent may be joined only when possessory action is commenced, and if omitted may not thereafter be added in that suit. *Paregol* v. *Smith* (D.C. Mun. App. 1954, 103 A. 2d 576).

Although proceedings in landlord and tenant actions are informal, tenant is entitled to be informed by complaint of nature of recovery sought against him. *Shipley* v. *Major* (D. C. Mun. App. 1945, 44 A. 2d 540).

Tender of rent

Landlord's prior refusal of proffered rent would not constitute a waiver which would entitle tenant, when sued for possession because of nonpayment of rent, to a trial on the merits without tendering the rent due, in absence of agreement supported by consideration that tenant could remain in possession without charge. *Crowder* v. *Lackey* (D. C. Mun. App. 1946, 46 A. 2d 699).

In action for possession of real property based on nonpayment of rent, defendant had right to defeat action by tendering the rent at the hearing. *Id.*

§ 45–912. Consolidation of actions.

If actions be brought separately, either in said United States District Court for the District of Columbia or in the District of Columbia Court of General Sessions, for arrears of rent and for the possession, they may be afterwards consolidated and one judgment rendered in them for the possession and also for the rent. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1227; Feb. 17, 1909, 35 Stat. 623, ch. 134; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

"Municipal court" was substituted for "justice of the peace" to conform to act Feb. 17, 1909.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 45–913. Procedure to eject married woman who is a tenant.

In all cases in which a married woman is or shall hereafter be a tenant of real estate in this District, and has defaulted in the payment of rent therefor or has made other default, it shall be lawful for the landlord to make such re-entry or bring such action for recovery of the demised premises as he or she might do if the lessee were a feme sole and had contracted for the payment of said rents or the performance of other acts and to suffer such re-entry to be made upon default therein. (Mar. 3, 1901, 31 Stat. 1376, ch. 854, § 1169.)

§ 45–914. Plea of title.

If, in an action in the District of Columbia Court of General Sessions to recover possession the defendant shall plead a title in himself or in some person under whom he claims, not derived from the plaintiff, the further proceeding therein shall be as directed in sections 11–701 to 11–749. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1228; Feb. 17, 1909, 35 Stat. 623, ch. 134; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

REFERENCES IN TEXT

Sections 11–701 to 11–749, referred to in this section, were repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), in the general revision of Part II of this Code, and are now covered by various sections and chapters in Titles 11 and 13—17. Provisions relating to forcible entry and detainer proceedings in the District of Columbia Court of General Sessions to recover possession are now covered by § 16–1501 et seq. For certification of a proceeding brought pursuant to those sections in the District Court, where defendant pleads title, see § 16–1504.

CHANGE OF NAME

"Municipal court" was substituted for "justice of the peace" to conform to act Feb. 17, 1909.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 45–915. Landlord's lien for rent.

The landlord shall have a tacit lien for his rent upon such of the tenant's personal chattels, on the premises, as are subject to execution for debt, to commence with the tenancy and continue for three months after the rent is due and until the termination of any action for such rent brought within said three months. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1229.)

NOTES TO DECISIONS

Amount of lien

Although four months' rent was due operation of landlord's lien was properly restricted to three months' rent under this section creating lien. *Klein* v. *Insurance Bldg.* (D. C. Mun. App. 1946, 46 A. 2d 368).

Bankruptcy of tenant

A landlord's statutory lien is not a "lien by legal proceedings" within U.S. Code, title 11, § 107(2), providing that liens obtained through legal proceedings against a person who is insolvent within four months prior to filing of petition in bankruptcy shall be void. *Moses* v. *Labofish* (1943, 132 F. 2d 16, 76 U.S. App. D.C. 401).

Where landlord brought action to recover possession of premises and rent due and recovered judgment under which levy was made on chattels which had been removed from leased premises after commencement of action, but, before the chattels were offered for sale, tenant filed voluntary petition in bankruptcy, the landlord's statutory lien and right to priority of payment out of proceeds was not impaired by the Bankruptcy Act, U.S. Code, title 11, § 1 et seq. *Id.*

Claim in bankruptcy

A landlord has a lien for rent on property of a bankrupt on leased premises, which may be enforced by making claim in bankruptcy. *In re Caplan* (D.C. Md. 1928, 23 F. 2d 680).

Duration of liens

Landlord's lien, once it attached, continued to attach no matter in whose hands the chattels may have come, unless displaced by removal of goods or sale in regular course of business, and sale of stock in mass which was not removed did not displace the lien. *Fowler* v. *Rapley* (1872, 82 U.S. 328, 15 Wall. 328, 21 L. Ed. 35).

Under this section, landlord acquired a statutory lien on personal property of tenant on premises from time of execution of lease and lien continued in full force for a period of three months after rent was due and until termination of any action to recover on lease. *Moses* v. *Labofish* (1943, 132 F. 2d 16, 76 U.S. App. D.C. 401).

The landlord's lien in District of Columbia is not dormant, but is in effect from the time personal chattels are brought upon leased premises and can only be displaced by a sale of the goods in the ordinary course of

trade followed by their removal from the premises. *Munday* v. *Bricklayers, Masons & Plasterers Intern. Union of America* (D. C. Mun. App. 1946, 47 A. 2d 398).

Landlord's lien attached to rug on office floor when it was brought on to premises by tenant and continued throughout period of tenancy. *Id.*

Lien surrender of lease

Surrender of lease and wrongful eviction of tenant by landlord as a defense to action for rent. *Okie* v. *Person* (1904, 23 App. D.C. 170). See, also, *Richmond* v. *Cake* (1893, 1 App. D.C. 447); *Hume* v. *Riggs* (1898, 12 App. D.C. 355).

Perfection of lien

The provisions of this section, giving landlord lien on such of tenant's personal chattels on premises as are subject to execution for debt, do not of their own force create a specific and perfected lien in the sense long understood as essential to overturn the priority granted to claim of United States. *United States* v. *Harry Saidman, Trustee, etc.* (1956, 231 F. 2d 503, 97 U.S. App. D.C. 344).

Landlord's claim under this section giving landlord rent lien on such of tenant's personal chattels on premises as are subject to execution for debt could not be granted priority over tax claims of United States for payment out of assets which were in hands of assignee for benefit of creditors, where landlord failed to perfect its lien by acquiring title or taking possession prior to the assignment. *Id.*

Where, on March 11, landlord filed complaint against tenant for possession of rented office and for $250 rental in arrears, on March 15, dealer engaged in buying, selling, and renting of office furniture purchased tenant's furniture and leased it to tenant and furniture remained on premises, sale did not affect landlord's lien. *Recachinas* v. *Kressin etc.* (D. C. Mun. App. 1958, 146 A. 2d 443).

Invocation of statutory enforcement methods was not necessary to perfection of landlord's lien (at least in so far as liens other than for federal taxes were concerned), and priority enjoyed by such lien over lien of chattel deed of trust executed after tenancy commenced and after chattels had been brought on premises was not lost when foreclosure sale was had under trust deed. *The Elmira Corp.* v. *Bulman and Goldstein, Trustees etc.* (D. C. Mun. App. 1957, 135 A. 2d 645).

Priority

Landlords of taxpayer had no judgment lien and were not "judgment creditors" of taxpayer on August 4 when United States recorded its federal tax lien, and federal tax lien would prevail over judgment lien of landlords, where government assessed taxpayer on May 26 for unpaid federal taxes, and on July 5 landlords began suit for unpaid rent and obtained writ of attachment, and on July 11, 1961 writ was executed by United States marshal who seized goods belonging to taxpayer, and on August 4 government's tax lien was filed, and on August 18, 1961 landlords obtained judgment in municipal court. *United States* v. *L. Leventhal et al.* (1963, 316 F. 2d 341, 114 U.S. App. D.C. 340).

Where landlords of taxpayer had statutory lien on date when government assessed taxpayer for unpaid federal taxes, but no steps at all were taken to assert or enforce landlords' lien before federal tax lien was filed, landlords' lien was an inchoate unperfected lien which did not have precedence over lien of government. *Id.*

Lien of landlord, so far as respects chattels on the premises, was entitled to priority over deeds of trust, unless the statutory lien was displaced. *Beall* v. *White* (1876, 94 U.S. 382, 4 Otto 382, 24 L. Ed. 173).

When the landlord is attempting to enforce a lien against chattels of lessee, which chattels were purchased on a conditional sales contract, his lien must be consistent with title and he cannot prevail against vendor of chattels even though conditional sales contract was not recorded. *Stern Co. of Washington* v. *Rosenberg* (1937, 89 F. 2d 843, 67 App. D.C. 99).

Where lease provided that no notice to quit should be necessary if default in rent occurred, but in landlord's suit for possession a confession of judgment and stipulation was filed permitting tenant to continue in possession and providing a new method of rent payment, the landlord's lien for three months' rent subsequently accruing was superior to lien under chattel deed of trust executed more than two months after the tenancy commenced. *Klein* v. *Insurance Bldg.* (D. C. Mun. App. 1946, 46 A. 2d 368).

Under this section, the landlord's lien takes priority over lien of a subsequently executed chattel deed of trust. *Id.*

Property covered

Where sale of rug on office floor to tenant's secretary was not made in ordinary course of trade and rug was not removed from premises, though no rent was due when sale was made, rug was subject to landlord's lien for three months' rent which subsequently accrued. *Munday* v. *Bricklayers, Masons & Plasterers Intern. Union of America* (D. C. Mun. App. 1946, 47 A. 2d 398).

Punitive damages

Where landlord held tenant's furniture and personal property not only for purpose of collecting overdue rent, but also for purpose of collecting a penalty arbitrarily and illegally sought to be imposed by him, award of punitive damages in tenant's detinue action was proper. *Katz* v. *Meyers* (D. C. Mun. App. 1955, 114 A. 2d 75).

Scope of lien

Lien for rent should not be extended beyond terms of this section to include other items such as water charges unless clear intention of parties to make this a part of consideration for leasing premises is shown; and such intention did not appear from contract in which convenant to pay water charges was separate from provision setting out rent. *The Elmira Corp* v. *Bulman and Goldstein, Trustees etc.* (D.C. Mun. App. 1957, 135 A. 2d 645).

Landlord's claim for water charges was a claim for damages for breach of covenant, and did not come within lien for rent. *Id.*

A landlord's statutory lien exists independently of the several means of enforcement which section 45–916 permits. *Moses* v. *Labofish* (1943, 132 F. 2d 16, 76 U.S. App. D.C. 401).

Secured lien

Landlord to whom chattels are delivered as security for payment of rent "had a lien on the property for the payment of his rent, which was something more than the tacit lien given to a landlord by the statute" and his possession cannot be disturbed without previous payment of the claim. *Brown* v. *Petersen* (1905, 25 App. D.C. 359).

Time of attachment of lien

Landlord's lien attached to chattel the moment it was placed upon the premises, and as long as it remained on premises the lien continued until each instalment of rent became due and for three months thereafter, and then ceased as to that instalment. *Webb* v. *Sharp* (1871, 80 U.S. 14, 13 Wall. 14, 20 L. Ed. 478).

The landlord's lien for rent commences with the tenancy, and is superior to chattel mortgage given by tenant thereafter. *Spilman* v. *Geiger* (1932, 58 F. 2d 890, 61 App. D.C. 164).

Landlord's statutory lien attaches at the moment chattels of tenants come upon leased premises. *Moses* v. *Labofish* (1943, 132 F. 2d 16, 76 U.S. App. D.C. 401).

Statutory rent lien without possession parallels common-law lien accompanied by possession and, by virtue of statute, attaches the moment chattels are brought on premises and exists independently of means of enforcement authorized by statute. *The Elmira Corp.* v. *Bulman and Goldstein, Trustees, etc.* (D. C. Mun. App. 1957, 135 A. 2d 645).

§ 45–916. Lien—How enforced.

The said lien may be enforced—

First. By attachment, to be issued upon affidavit that the rent is due and unpaid; or, if it be not due, that the defendant is about to remove or sell some part of said chattels.

Second. By judgment against the tenant and execution, to be levied on said chattels, or any of them, in whosesoever hands they may be found.

Third. By action against any purchaser of said chattels, with notice of the lien, in which action the

plaintiff may have judgment for the value of the chattels purchased by the defendant not exceeding the rent in arrear. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1230.)

NOTES TO DECISIONS

Generally

Invocation of enforcement methods was not necessary to perfection of landlord's lien (at least in so far as liens other than for federal taxes were concerned), and priority enjoyed by such lien over lien of chattel deed of trust executed after tenancy commenced and after chattels and had been brought on premises was not lost when foreclosure sale was had under trust deed. *The Elmira Corp.* v. *Bulman and Goldstein, Trustees, etc.* (D. C. Mun. App. 1957, 135 A. 2d 645).

Statutory rent lien without possession parallels common-law lien accompanied by possession and, by virtue of statute, attaches the moment chattels are brought on premises and exists independently of means of enforcement authorized by this section. *Id.*

§ 45–917. How attachment enforced.

Such attachment may be issued in any action for the recovery of the possession of the leased premises by the landlord, in which the rent in arrear, or double rent, or both, shall be claimed as aforesaid, and it shall be lawful for any officer to whom the writ of attachment shall be delivered to be executed to break open an outer or inner door when necessary to the execution of the same. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1231.)

§ 45–918. Property subject to lien for rent not to be taken on execution without first paying all rent due.

No goods or chattels whatsoever, lying or being in or upon any messuage, lands, or tenements, which are or shall be leased for life or lives, term of years, at will, or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out, shall before the removal of such goods from off the said premises, by virtue of such execution or extent, pay to the landlord of the said premises, or his bailiff, all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution: *Provided,* The said arrears of rent do not amount to more than three months' rent, and in case the said arrears shall exceed three months' rent, then the said party, at whose suit such execution is sued out, paying the said landlord, or his bailiff, three months' rent, may proceed to execute his judgment as he might have done before the making of this section; and the marshal is hereby impowered and required to levy and pay to the plaintiff as well the money so paid for rent, as the execution money. (8 Ann, ch. 14, § 1, 1709; Kilty's Rep. 248; Alex. Br. Stat. 681; Comp. Stat. D. C., 325, § 41.)

§ 45–919. Distress not void because of irregularity—Party not trespasser ab initio—Special damages only recoverable—Tender of amends defeats recovery.

Where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party or parties distraining, or by his, her, or their agents; the distress itself shall not be therefore deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers ab initio; but the party or parties aggrieved by such unlawful act or irregularity shall or may recover full satisfaction for the special damage he, she, or they shall have sustained thereby, and no more, in an action of trespass or on the case at the election of the plaintiff or plaintiffs: *Provided always,* That where the plaintiff or plaintiffs shall recover in such action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the like remedies for the same as in other cases of costs: *Provided nevertheless,* That no tenant or tenants, lessee or lessees, shall recover in any action for any such unlawful act or irregularity as aforesaid, if tender of amends hath been made by the party or parties distraining, his, her, or their agent or agents, before such action brought. (11 Geo. 2, ch. 19, §§ 19, 20, 1738; Kilty's Rep. 251; Alex. Br. Stat. 741, 742; Comp. Stat. D. C., 334, §§ 66, 67.)

§ 45–920. Fraudulent removal, conveyance, or concealment of property to defeat lien subjects guilty party to forfeiture of double value of such property.

If any tenant or lessee shall fraudulently remove and convey away his or her goods or chattels, or if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away or carrying off of any part of his or her goods or chattels, or in concealing the same; all and every person or persons so offending shall forfeit and pay to the landlord or landlords, lessor or lessors, from whose estate such goods and chattels were fraudulently carried off as aforesaid, double the value of the goods by him, her or them respectively carried off or concealed as aforesaid; to be recovered by action of debt in any court of record. (11 Geo. 2, ch. 19, § 3, 1738; Kilty's Rep. 251; Alex. Br. Stat. 732; Comp. Stat. D. C., 329, § 53.)

§ 45–921. Representatives of life tenant may recover from under-tenant proportion of rent.

Where any tenants for life shall happen to die before or on the day, on which any rent was reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant for life, the executors or administrators of such tenant for life shall and may in an action on the case recover of and from such under-tenant or under-tenants of such lands, tenements, or hereditaments, if such tenant for life die on the day on which the same was made payable the whole, or if before such day then a proportion, of such rent according to the time such tenant for life lived, of the last year, or quarter of a year or other time in which the said rent was growing due as aforesaid, making all just allowances or a proportionable part thereof respectively. (11 Geo. 2, ch. 19, § 15, 1738; Kilty's Rept. 251; Alex. Br. Stat. 739; Comp. Stat. D. C. 333, § 64.)

§ 45–922. Debt may be brought for instalments of rent under lease for life.

It shall and may be lawful for any person or persons, having any rent in arrear, or due upon any lease or demise for life or lives, to bring an action or actions of debt for such arrears of rent, in the same manner they might have done, in case such rent were due,

and reserved upon a lease for years. (8 Ann, ch. 14, § 4, 1709; Kilty's Rept. 248; Alex. Br. Stat. 682; Comp. Stat. D. C., 325, § 42.)

§ 45–923. Action of case for use and occupation—Parol agreement evidence of quantum of damages.

It shall and may be lawful to and for the landlord or landlords, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments, held or occupied by the defendant or defendants, in an action on the case, for the use and occupation of what was so held or enjoyed; and if in evidence on the trial of such action any parol demise or any agreement (not being by deed) whereon a certain rent was reserved shall appear, the plaintiff in such action shall not therefor be nonsuited, but may make use thereof as an evidence of the quantum of the damages to be recovered. (11 Geo. 2, ch. 19, § 14, 1738; Kilty's Rep. 251; Alex. Br. Stat. 738; Comp. Stat. D. C., 333, § 63.)

§ 45–924. Lunatic, entitled to renewal of lease, or his guardian or committee, under order of court, may surrender lease—Also make new lease.

In all cases where any lunatic is or shall be intitled, or has right to renew any lease or leases made or granted, or to be made or granted, for the life or lives of one or more person or persons, or for any term or number of years, absolute or determinable on the death of one or more person or persons, or otherwise; it shall and may be lawful to and for such lunatic, or his or her guardian or guardians, committee or committees, of his estate, in his, her, or their name or names, by the direction of the chancellor, signified by an order made on hearing all parties concerned, upon petition, in a summary way, from time to time, to accept of a surrender or surrenders of such lease or leases; and to make and execute to any person or persons, bodies politic, or corporate or collegiate, aggregate or sole, a new lease or leases of the premises comprised in such lease or leases so to be surrendered by virtue of this section, for and during such number of lives, or for such term or terms of years, determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in such lease or leases so surrendered, at the making thereof, or otherwise, as the chancellor for the time being, by any such order, so to be obtained as aforesaid, shall direct. (11 Geo. 3, ch. 20, § 1, 1771; Kilty's Rep. 253; Alex. Br. Stat. 791; Comp. Stat. D. C., 336, § 74.)

§ 45–925. Lease made pursuant to section 45–924 valid.

All and every such lease or leases so to be made or executed as aforesaid, shall be and be deemed as good and valid, and effectual in the law, to all intents and purposes, as if such lunatic was at the time of making or executing thereof of sane mind, and had executed the same in his or her own proper person. (11 Geo. 3, ch. 20, § 2, 1771; Kilty's Rep. 253; Alex. Br. Stat. 791; Comp. Stat. D. C., 336, § 75.)

§ 45–926. Accruals from renewals of leases, property of lunatic—Unapplied part at death of lunatic treated as real property, unless lunatic be tenant for life, then personal property.

All fines, premiums, foregifts, and sums of money, which shall or may be had, received, or paid for, or on account of the renewing of any such lease or leases as aforesaid, shall (after a deduction of all necessary incident charges and expenses) be paid to the guardian or guardians, committee or committees, of the said lunatic, and be applied and disposed of for the benefit of such lunatic, in such manner as the chancellor shall direct: but, upon the death of such lunatic or lunatics, all such sum or sums of money as shall arise by such fines, premiums, or foregifts, or so much as shall remain unapplied for the benefit of such lunatic or lunatics, at his, her or their death, shall, as between the representatives of the real and personal estates of all such lunatics, be considered as real estate, unless such lunatic or lunatics shall be tenants for life only; and then the same shall be considered as personal estate. (11 Geo. 3, ch. 20, § 3, 1771; Kilty's Rep. 253; Alex. Br. Stat. 792; Comp. Stat. D. C., 336, § 76.)

§ 45–927. Lunatic or infant, or guardian or committee, under order of court, may surrender and take new leases.

In all cases where any person under the age of twenty-one years, or any lunatick, is or shall become interested in or intitled to any lease or leases made or granted, or to be made or granted, by any person or persons, bodies politick, corporate or collegiate, aggregate or sole, for the life or lives of one or more person or persons, or for any term of years, either absolute or determinable upon the death of one or more person or persons or otherwise, it shall and may be lawful for such person under the age of twenty-one years, or for his or her guardian or guardians, or other person or persons on his or her behalf, and for such lunatick, or his or her guardian or guardians, committee or committees of the estate, or other person or persons on his or her behalf, to apply to the court of chancery by petition or motion, in a summary way, and by the order and direction of the said court made, upon hearing all parties concerned, such person under the age of twenty-one years, and such lunaticks, or person or persons appointed by the said courts respectively, by deed or deeds only, shall and may be enabled, from time to time, to surrender such lease or leases, and accept and take, in the name, and for the benefit of such person under the age of twenty-one years, or lunatick, one or more new lease or leases of the premises comprised in such lease or leases surrendered by virtue of this section for and during such number of lives, or for such term or terms of years, determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned or contained in such lease or leases so surrendered, at the making thereof respectively, or otherwise as the said court shall respectively direct. (29 Geo. 2, ch. 31, § 1, 1756; Kilty's Rep. 253; Alex. Br. Stat. 788; Comp. Stat. D. C., 335, § 70.)

§ 45–928. Expenses and costs of renewal chargeable against interest of infant or lunatic.

All and every sum and sums of money and other consideration, paid or advanced by any such guardian, trustee, committee or other person, for or on account of the renewal of any such lease or leases, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the infant or

lunatick for whose benefit the said lease or leases shall be renewed, or shall be a charge and incumbrance upon the leasehold premisses, together with interest for the same, as the said court shall direct and determine. (29 Geo. 2, ch. 31, § 2. 1756; Kilty's Rep. 253; Alex. Br. Stat. 789; Comp. Stat. D. C., 335, § 71.)

§ 45–929. Renewed leases shall be to the same uses, trusts, charges, incumbrances, devises, and conditions as surrendered leases were.

The respective leases to be so renewed, shall operate, and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devises and conditions, as the leases to be, from time to time, surrendered as aforesaid, were or would have been subject to, in case such surrender had not been made. (29 Geo. 2, ch. 31, § 3, 1756; Kilty's Rep. 253; Alex. Br. Stat. 790; Comp. Stat. D. C., 335, § 72.)

§ 45–930. Surrendered and renewed lease of lunatic or infant valid.

Every such surrender, and such lease or leases granted thereupon, shall be, and be deemed as valid and legal, to all intents and purposes, as if such surrender had been made by and on the behalf of a person of full age, or sane mind. (29 Geo. 2, ch. 31. § 4, 1756; Kilty's Rep. 253; Alex. Br. Stat. 790; Comp. Stat. D. C., 336, § 73.)

§ 45–931. Surrender for new lease good without surrender of under leases—Under leases continue unaffected—All rights and remedies to continue.

In case any lease shall be duly surrendered, in order to be renewed, and a new lease made and executed by the chief landlord or landlords, the same new lease shall, without a surrender of all the under leases, be as good and valid, to all intents and purposes, as if all the under leases derived thereout had been likewise surrendered at or before the taking of such new lease; and all and every person and persons in whom any estate for life or lives, or for years, shall, from time to time, be vested by virtue of such new lease, and his, her, and their executors and administrators, shall be entitled to the rents, covenants, and duties, and have like remedy for recovery thereof, and the under lessees shall hold and enjoy the messuages, lands, and tenements, in the respective under leases, comprised, as if the original leases, out of which the respective under leases are derived, had been still kept on foot and continued, and the chief landlord and landlords shall have, and be intitled to, such and the same remedy, by distress or entry in and upon the messuages, lands, tenements, and hereditaments comprised in any such under lease, for the rents and duties reserved by such new lease, so far as the same exceed not the rents and duties reserved in the lease, out of which such under lease was derived, as they would have had in case such former lease had been still continued, or as they would have had, in case the respective under leases had been renewed under such new principal lease. (4 Geo. 2, ch. 28, § 6, 1731; Kilty's Rep. 249; Alex. Br. Stat. 708; Comp. Stat. D. C., 328, § 50.)

§ 45–932. Assignee of reversion.

The grantee or assignee of the reversion of any leased premises shall have the same right of action against the lessee, his personal representatives, heirs, or assigns, for rent or for any forfeiture or breach of any covenant or condition in the lease which the grantor or assignor might have had; and the assignee of the lessee shall have the same rights of action against the lessor, his grantee, or assignee, upon any covenants in the lease which the lessee might have had against the lessor. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1234.)

NOTES TO DECISIONS

Concurrent lease

Where, during monthly tenancy under two year lease containing provision that if tenant should remain in possession after expiration of term, he would become tenant by month, lessors executed five year lease of same property to third party with provisions that new lease was subject to prior lease, and that lessors would assign prior lease to the third parties, and where lessors then completed such assignment, new lease was "concurrent lease", involving assignment of part of reversion, and lessees thereunder could enforce covenants of prior lease against monthly tenant. *Gulf Motors Inc. et ano.* v. *Fenner et ano.* (D. C. Mun. App. 1955, 114 A. 2d 543).

"Concurrent lease" is one granted for term which is to commence before expiration or other determination of previous lease of same premises made to another person, and is assignment of part of reversion entitling lessee to all rents accruing on previous lease after date of concurrent lease, and all remedies as against tenants under previous lease as his lessor would have had except for assignment. *Id.*

Covenant against assigning

A covenant in a lease against assigning, being for the benefit of lessor, may be availed of only by him or his representative or assignee. *Mars* v. *Spanos* (1944, 139 F. 2d 369, 78 U.S. App. D.C. 230).

Where landlord made no objection to assignment of lease to partnership and ratified assignment by accepting from partnership and receiver for partnership business rent for two years as it became due, assignors could not question partnership's ownership of lease on ground that lease prohibited assignment except by consent of landlord. *Id.*

Covenant against subletting

Covenant against subletting runs with the land and may be enforced by assignee of reversion. *Bailey* v. *Allan E. Walker & Co.* (1923, 290 F. 282, 53 App. D.C. 307).

Evidence

Defendant could not urge that plaintiff did not have right to bring suit to recover possession of leased premises because there was no proof that lease had been transferred by original lessor to plaintiff, where defendant in answer admitted that he was holding premises as a monthly tenant of plaintiff. *Banks* v. *Torre* (D. C. Mun. App. 1948, 56 A. 2d 52).

New owners' actions for rent, use, and occupation

When the new owners purchased the property, they acquired the same right of action for rent, or for use and occupation, against the lessee, if holding over his term, which the original owner had. *Selden* v. *Lee* (1925, 3 F. 2d 335, 55 App. D.C. 164).

§ 45–933. Grants of remainders, reversions, and rents good without attornment—Payment of rent without notice valid.

All grants or conveyances of any manors or rents or of the reversion or remainder of any messuages or lands, shall be good and effectual, to all intents and purposes, without any attornment of the tenants of any such manors, or of the land out of which rent shall be issuing, or of the particular tenants upon whose particular estates any such reversions or remainders shall and may be expectant or depending, as if their attornment had been had and made: *Provided, nevertheless,* That no such tenant shall be

prejudiced or damaged by payment of any rent to any such grantor or conusor, or by breach of any condition for nonpayment of rent, before notice shall be given to him of such grant by the conusee or grantee. (4 Ann., ch. 16, §§ 9, 10, 1705; Kilty's Rep. 246; Alex. Br. Stat. 660, 661; Comp. Stat. D.C., 496, §§ 31, 32.)

§ 45–934. Fraudulent attornment void—Possession not changed by such attornment—Attornment pursuant to judgment excepted.

All and every fraudulent attornment and attornments of any tenant or tenants of any messuages, lands, tenements, or hereditaments, shall be absolutely null and void to all intents and purposes whatsoever; and the possession of their respective landlord or landlords, lessor or lessors, shall not be deemed or construed to be any wise changed, altered, or affected by any such attornment or attornments: *Provided always,* That nothing herein contained shall extend to vacate or affect any attornment made pursuant to and in consequence of some judgment at law, or decree or order of a court of equity, or made with the privity and consent of the landlord or landlords, lessor or lessors, or to any mortgagee after the mortgage is become forfeited. (11 Geo. 2, ch. 19, § 11, 1738; Kilty's Rep. 251; Alex. Br. Stat. 737; Comp. Stat. D. C., 332, § 60.)

Chapter 10.—POWERS

Sec.
45–1001. Definition.
45–1002. General power.
45–1003. Special power.
45–1004. Beneficial power.
45–1005. Effect of absolute power to owner of particular estate.
45–1006. Effect of such power to one without particular estate.
45–1007. Effect where no remainder on particular estate.
45–1008. Construction of power to particular tenant to devise the inheritance.
45–1009. Right of grantor to reserve power.
45–1010. Liability of beneficial powers in equity.
45–1011. General powers in trust.
45–1012. Special powers in trust.
45–1013. Trust powers imperative.
45–1014. Selection under trust powers.
45–1015. Group of beneficiaries to take equally unless otherwise directed—Trustee with discretion may allot all to one person.
45–1016. Execution of trust powers for benefit of creditors and assignees.
45–1017. Manner of executing powers.
45–1018. Power by grant may not be executed by will.
45–1019. Instrument will be deemed execution of power if grantee had no other right to make it.

§ 45–1001. Definition.

A power is an authority to do some act in relation to lands or the creation of estates therein or of charges thereon which the owner granting or reserving such power might himself lawfully perform. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1037.)

CROSS REFERENCE

Power of surviving trustee to execute power of sale, see § 20–1105.

§ 45–1002. General power.

A power is general where it authorizes the alienation in fee, by means of a conveyance, will, or charge, of the lands embraced in the power to any alienee whatever. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1038.)

NOTES TO DECISIONS

Release of power

All general powers of appointment, whether presently exercisable or testamentary, can be released. *Carroll* v. *Tobriner* (D.C.D.C. 1966, 253 F. Supp. 87).

§ 45–1003. Special power.

A power is special—

First. Where the persons or class of persons to whom the disposition of the lands under the power is to be made are designated.

Second. Where the power authorizes the alienation, by means of a conveyance, will, or charge, of a particular estate or interest less than a fee. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1039.)

§ 45–1004. Beneficial power.

A general or special power is beneficial where no person other than the grantee has, by the terms of its creation, any interest in its execution. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1040.)

§ 45–1005. Effect of absolute power to owner of particular estate.

Where an absolute power of disposition, not accompanied by any trust, shall be given to the owner of a particular estate for life or years, such estate shall be changed into a fee, absolute in respect to the rights of creditors and purchasers but subject to any future estates limited thereon in case the power should not be executed or the lands should not be sold for the satisfaction of debts. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1041.)

§ 45–1006. Effect of such power to one without particular estate.

Where a like power of disposition shall be given to any person to whom no particular estate is limited, such person shall also take a fee, subject to any future estates that may be limited thereon but absolute in respect to creditors and purchasers. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1042.)

§ 45–1007. Effect where no remainder on particular estate.

In all cases where such power of disposition is given and no remainder is limited on the estate of the grantee of the power, such grantee shall be entitled to an absolute fee. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1043.)

§ 45–1008. Construction of power to particular tenant to devise the inheritance.

Where a general and beneficial power to devise the inheritance shall be given to a tenant for life or for years, such tenant shall be deemed to possess an absolute power of disposition, within the meaning and subject to the provisions of sections 45–1005 to 45–1007. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1044.)

§ 45–1009. Right of grantor to reserve power.

The grantor in any conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another, and every power thus reserved shall be subject to the provisions of this chapter as if granted to another. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1045.)

§ 45–1010. Liability of beneficial powers in equity.

Every special and beneficial power shall be liable, in equity, to the claims of creditors, and the execution of the power may be decreed for the benefit of the creditors entitled. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1046.)

§ 45–1011. General powers in trust.

A general power is in trust when any person or class of persons other than the grantee of such power is designated as entitled to the proceeds, or any portion of the proceeds or other benefits to result from the alienation of the lands, according to the power. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1047.)

§ 45–1012. Special powers in trust.

A special power is in trust—

First. When the disposition which it authorizes is limited to be made to any person or class of persons other than the grantee of such power.

Second. When any person or class of persons other than the grantee is designated as entitled to any benefit from the disposition or change authorized by the power. (Mar. 3, 1901, 31 Stat. 1353, ch. 854, § 1048.)

§ 45–1013. Trust powers imperative.

Every trust power, unless its execution or nonexecution is made expressly to depend on the will of the grantee, is imperative and imposes a duty on the grantee the performance of which may be compelled in equity for the benefit of the parties interested. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1049.)

§ 45–1014. Selection under trust powers.

A trust power does not cease to be imperative where the grantee has the right to select any and exclude others of the persons designated as the objects of the trust. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1050.)

§ 45–1015. Group of beneficiaries to take equally unless otherwise directed—Trustee with discretion may allot all to one person.

Where a disposition under a power is directed to be made to or among or between several persons, without any specifications of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion. But when the terms of the power import that the estate or fund is to be distributed between the persons so designated, in such manner or proportions as the trustee of the power may think proper, the trustee may allot the whole to any one or more of such persons in exclusion of the others. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1051.)

§ 45–1016. Execution of trust powers for benefit of creditors and assignees.

The execution in whole or in part of any trust power may be decreed in equity for the benefit of the creditors or assignees of any person entitled to compel its execution when the interest of the objects of such trust is assignable. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1052.)

§ 45–1017. Manner of executing powers.

No power can be executed except by some instrument in writing, which would be sufficient in law to pass the estate or interest intended to pass under the power if the person executing the power were the actual owner. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1053.)

NOTES TO DECISIONS

Assignment by contract

Where power of appointment could be exercised only by will, attempt to assign part of donee's interest by a contract was invalid. *Mondell* v. *Thom* (1944, 143 F. 2d 157, 79 U. S. App. D. C. 145).

§ 45–1018. Power by grant may not be executed by will.

Where a power to dispose of lands is confined to a disposition by devise or will, the instrument of execution must be a will duly executed; and where a power is confined to a disposition by grant it can not be executed by will, although the disposition is not intended to take effect until after the death of the party executing the power. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1054.)

CROSS REFERENCE

Wills, see §§ 18–108 and 18–303.

§ 45–1019. Instrument will be deemed execution of power if grantee had no other right to make it.

Every instrument executed by the grantee of a power conveying an estate or creating a charge, which such grantee would have no right to convey or create unless by virtue of his power, shall be deemed a valid execution of the power, although such power be not recited or referred to therein. (Mar. 3, 1901, 31 Stat. 1354, ch. 854, § 1055.)

Chapter 11.—SALE OF CONTINGENT AND LIMITED INTERESTS

Sec.

45–1101. Sale of contingent interests.
45–1102. Application for sale by verified bill in equity showing all facts.
45–1103. Proceeds of sale of contingent interest held as real property.
45–1104. Sale of all limited interests.

§ 45–1101. Sale of contingent interests.

Where real estate is limited to one or more for life, with a contingent limitation over to such issue of one or more of the tenants for life as shall be living at the death of their parent or parents, and the deed or will does not prohibit a sale, said court may, on the application of the tenants for life, and if the court shall be of opinion that it is expedient to do so, order a sale of such estate and decree to the purchaser an absolute and complete title in fee simple (Mar. 3, 1901 31 Stat. 1205, ch. 854, § 97.)

NOTES TO DECISIONS

Generally

This section clothed the court with authority to sell a restricted and particular class of limited estates, and was therefore special legislation, the specific provisions of which had to be given effect as against the more general and more comprehensive provisions of § 100 (§ 45–1104) on the same subject matter. *Simon* v. *Simon* (1928, 26 F. 2d 530, 58 App. D.C. 158).

Bond of trustee

Bond of trustee for sale of property of a minor for reinvestment purposes may not be attacked as invalid by the surety. *United States ex rel. Hine* v. *Morse* (1911, 31 S. Ct. 37, 218 U.S. 493, 54 L. Ed. 1123).

§ 45–1102. Application for sale by verified bill in equity showing all facts.

Any application for such sale shall be by bill, verified by the oath of the party or parties, in which all the facts shall be distinctly set forth upon the existence of which it is claimed that such sale should be decreed, which facts shall be proved by competent testimony. All of the issue embraced in the limitation who are in existence at the time of the application shall be made parties defendant, together with all who would take the estate in case the limitation over should never vest; and minors of the age of fourteen years or more shall answer in proper person under oath, as well as by guardian ad litem, and all evidence shall be taken upon notice to the parties and the guardian ad litem. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 98.)

§ 45–1103. Proceeds of sale of contingent interest held as real property.

The proceeds of sale of said real estate shall be held under the control and subject to the order of the court, and shall be invested under its order and supervision upon real and personal security, and the same shall, to all intents and purposes, be deemed real estate and stand in the place of the real estate from the sale of which they are derived, and as such be subject to the limitations of the deed or will. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 99.)

§ 45–1104. Sale of all limited interests.

Wherever one or more persons shall be entitled to an estate for life or years, or a base or qualified fee simple, or any other limited or conditional estate in lands, and any other person or persons shall be entitled to a remainder or remainders, vested or contingent, or an interest by way of executory devise in the same lands, on application of any of the parties in interest the court may, if all the parties in being are made parties to the proceeding, decree a sale or lease of the property, if it shall appear to be to the interest of all concerned, and shall direct the investment of the proceeds so as to inure in like manner as provided by the original grant to the use of the same parties who would be entitled to the land sold or leased; and all such decrees, if all the persons are parties who would be entitled if the contingency had happened at the date of the decree, shall bind all persons, whether in being or not, who claim or may claim any interest in said land under any of the parties to said decree, or under any person from whom any of the parties to such decree claim or from or under or by the original deed or will by which such particular, limited, or conditional estate, with remainders or executory devises, were created. (Mar. 3, 1901, 31 Stat. 1205, ch. 854, § 100.)

NOTES TO DECISIONS

Equity jurisdiction

Equity had no jurisdiction to decree sale of lands of a lunatic for the purpose of better investment. *Clark* v. *Mathewson* (1896, 7 App. D.C. 382).

Chapter 12.—USES AND TRUSTS

Sec.

45–1201. The legal estate in cestui que use.
45–1202. Where several are jointly seized of lands to the use of any so seized, the latter shall be deemed to have the possession and seizing of same.
45–1203. Purchaser for value.

§ 45–1201. The legal estate in cestui que use.

Where lands, tenements, or hereditaments are conveyed or devised to one person, whether for years or for a freehold estate, to the use of or in trust for another, no estate or interest, legal or equitable, shall vest in the trustee, but the person entitled, according to the true intent and meaning of such instrument, to the actual possession of the property and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein of the same quality and duration and subject to the same conditions as his beneficial interest, except where the title of such trustee is not merely nominal but is connected with some power of actual disposition or management of the property conveyed. (Mar. 3, 1901, 31 Stat. 1432, ch. 854, § 1617.)

CROSS REFERENCE

Fraudulent conveyances, see §§ 28–3101 to 28–3103.

NOTES TO DECISIONS

Active trusts

Where, at time of his death, testator was sole owner of five parcels of real property and also owned an undivided one-third interest in a great number of other parcels of real property and properties had various types of improvements, in various states of repair, and would be most difficult to dispose of in an orderly fashion, will clause, directing executor-trustee to distribute to the beneficiaries, devisees and legatees any property of any character of which testator died the owner, required fiduciary to undertake sufficiently active duties so that fiduciary would have to take title to real estate and proceed with its distribution as will directed. *Liberty National Bank of Washington* v. *Smoot et al.* (D.C.D.C. 1956, 135 F. Supp. 654).

If testamentary trustee has duties to perform, trust is active and trustee will take title and administer and manage properties, but if trustee has no duties other than to convey title, trust is passive and title vests in devisees. *Id.*

Real property in interest

Even though assignee of expired lease in taking title to property acted solely as agent or straw party for realty corporation, which was seeking to acquire a number of parcels of real estate in neighborhood, assignee was entitled to bring possessory action against lessee, who was hold-over tenant, since lessee could assert any right he had to possession in suit by assignee in same manner that he could have asserted such right if corporation had brought suit. *Lake* v. *Angelo* (D. C. Mun. App. 1960, 163 A. 2d 611).

§ 45–1202. Where several are jointly seized of lands to the use of any so seized, the latter shall be deemed to have the possession and seizing of same.

Where divers and many persons be, or hereafter shall happen to be jointly seized of and in any lands, tenements, rents, reversions, remainders, or other hereditaments, to the use, confidence, or trust of any of them that be so jointly seized, in every such case those person or persons which have or hereafter shall have any such use, confidence, or trust in any such lands, tenements, rents, reversions, remainders, or hereditaments, shall from henceforth have, and be deemed and adjudged to have only to him or them that have, or hereafter shall have such use, confidence, or trust, such estate, possession, and seizin, of and in the same lands, tenements, rents, reversions, remainders, and other hereditaments, in like nature, manner, form, condition, and course, as he or they had before in the use, confidence, or trust of the same lands, tenements, or hereditaments; saving and reserving to all and singular persons, and

bodies politick, their heirs, and successors, other than those person or persons which be seized, or hereafter shall be seized of any lands, tenements, or hereditaments, to any use, confidence, or trust, all such right, title, entry, interest, possession, rents, and action, as they or any of them had, or might have had before the year 1535. (27 Hen. 8, ch. 10, § 2, 1535; Kilty's Rep. 231; Alex. Br. Stat. 294; Comp. Stat. D. C., 537, § 2.)

§ 45–1203. Purchaser for value.

No implied or resulting trust shall be alleged or established to defeat or prejudice the title of a purchaser for a valuable consideration and without notice of such trust; and where an express trust is created, but is not contained or declared in the conveyance to the trustee, such conveyance shall be deemed absolute in favor of purchasers from the trustee for value and without notice of the trust. (Mar. 3, 1901, 31 Stat. 1432, ch. 854, § 1618.)

Chapter 13.—WASTE

Sec.
45–1301. Writ of waste—Lease forfeited for waste and lessee pays treble damages.
45–1302. Waste not to be committed except with license in writing—Damages and amerciament for waste.
45–1303. Reversioner may forfeit lease for waste of tenant, though he has assigned to another.
45–1304. Joint tenant or tenant in common against cotenant.

§ 45–1301. Writ of waste—Lease forfeited for waste and lessee pays treble damages.

A man from henceforth shall have a writ of waste in the chancery against him that holdeth by law, or otherwise for term of life, or for term of years, or a woman in dower; and he which shall be attainted of waste, shall leese the thing that he hath wasted, and moreover shall recompense thrice so much as the waste shall be taxed at. (6 Edw. 1, ch. 5, § 1, 1278; Kilty's Rep. 211; Alex. Br. Stat. 83; Comp. Stat. D. C., 319, § 21.)

NOTES TO DECISIONS

Implied covenant

The covenant not to commit, or suffer waste to be committed, is implied in every lease. *Klein* v. *Longo* (D. C. Mun. App. 1943, 34 A. 2d 359).

Questions of fact

Whether a tenant by breach of covenant to make repairs has committed waste is a question of fact for trial court. *Klein* v. *Longo* (D.C. Mun. App. 1943, 34 A. 2d 359).

Waiver

A lessor may waive the breach of a specific covenant by delay in enforcement, or by subsequent acceptance of rent. *Klein* v. *Longo* (D.C. Mun. App. 1943, 34 A. 2d 359).

Where breach of an express covenant followed by other instances of abuse to property by tenant results in injury to reversion, the waiver implied by acceptance of rent and failure to terminate tenancy upon breach of covenant does not exclude covenant from consideration when issue in action to recover possession is whether conduct of tenant over a period of years justifies finding that waste has been commited. *Id.*

Waste

Acts constituting a breach of an express covenant, which are of such a nature that when followed by other instances of abuse of the property by the tenant result in injury to the reversion, constitute "waste". *Klein* v. *Longo* (D.C. Mun. App. 1943, 34 A. 2d 359).

Breach of covenant to make repairs by failure to replace broken hinge of gate, to reset a fallen fence, to mend broken plaster, or to repaper walls, supplemented by acts evidencing a wanton disregard of landlord's rights, authorized a finding that "waste" has been committed, notwithstanding that each breach of itself might have been too inconsequential to justify a forefeiture of tenant's term. *Id.*

§ 45–1302. Waste not to be committed except with license in writing—Damages and amerciament for waste.

Fermors, during their terms, shall not make waste, sale or exile of house, or woods, nor of any thing belonging to the tenements, that they have to ferm, without special license had by writing of covenant, making mention, that they may do it; which thing if they do, and thereof be convict, they shall yield full damage, and shall be punished by amerciament grievously. (52 Hen. 3, ch. 23, § 2, 1267; Kilty's Rep. 209; Alex. Br. Stat. 46, 47; Comp. Stat. D.C., 318, § 19.)

§ 45–1303. Reversioner may forfeit lease for waste of tenant, though he has assigned to another.

Because that diverse people in times past have let their lands and tenements to divers persons, that is to say, some for term of life or of another man's life, and some for term of years, the said tenants have oftentimes let and granted their estate which they had in the same lands and tenements, to many persons, to the intent that they in the reversion, that is to say, their lessors, their heirs, or their assigns, might not have knowledge of their names, and after the said first tenants continually occupy the said lands and tenements, and thereof take the profits to their proper use, and in the said lands and tenements commit waste and destruction, to the disheritance of them in the reversion: It is ordained and established, that they in the reversion in such case may have and maintain a writ of waste against the said tenants for term of life, of another's life, or for years, and so recover against them the place wasted, and their treble damages, for the waste by them done, as they ought to have done for the waste committed by them before the said grant and lease of their estate. Provided always, that this ordinance hold not place, but where the first tenants before the lease and grant of their said estates, in the manner and form abovesaid, were unpunishable of waste; and also where after the said grant and lease the said first tenants of the said lands and tenements take the profits at the time of the waste done, to their own proper use. (11 Hen. 6, ch. 5, § 1, 1433; Kilty's Rep. 227; Alex. Br. Stat. 243; Comp. Stat. D. C., 320, § 26.)

§ 45–1304. Joint tenant or tenant in common against cotenant.

Any joint tenant or tenant in common may maintain an action for waste committed by his cotenant, or in a suit for a partition, or a sale for purpose of partition may have said waste charged against the share of the cotenant committing the same. (Mar. 3, 1901, 31 Stat. 1433, ch. 854, § 1622.)

Chapter 14.—REAL ESTATE AND BUSINESS BROKERS' LICENSES

Sec.
45–1401. Acting as broker or salesman without license unlawful.
45–1402. Definitions—Exceptions.
45–1403. Real Estate Commission created—Membership—Seal—Records—Compensation.
45–1404. Qualifications for license.
45–1405. Application for license—Requirements—Location of business—Members—Individual broker's and real-estate salesman's license—Bond—Form, conditions.
45–1406. Procedure when license refused.
45–1407. Details relating to license.
45–1408. Suspension or revocation of license—Causes enumerated.
45–1409. Hearing before suspension—Court review—Appeal.
45–1410. Provisions applicable to nonresident brokers and salesmen
45–1411. Power to obtain evidence.
45–1412. Further exemptions—Exceptions.
45–1413. List of licensees to be published.
45–1414. Fraudulent transfers or loans.
45–1415. License revoked on conviction of crime.
45–1416. Penalties—Prosecutions.
45–1417. Bond required for renewal of licenses
45–1418. Separability of provisions.

§ 45–1401. Acting as broker or salesman without license unlawful.

That on and after ninety days from Aug. 25, 1937, it shall be unlawful in the District of Columbia for any person, firm, partnership, copartnership, association, or corporation (foreign or domestic) to act as a real-estate broker, real-estate salesman, business-chance broker or business-chance salesman, or to advertise or assume to act as such, without a license issued by the Real Estate Commission of the District of Columbia. (Aug. 25, 1937, 50 Stat. 787, ch. 760, § 1; Aug. 10, 1939, 53 Stat. 1352, ch. 664, § 2.)

AMENDMENT

1939—Act Aug. 10, 1939, added the words "or business-chance salesman."

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

Exempted from operation of Money Lender License Law, see § 26–610.

NOTES TO DECISIONS

Generally

Real estate broker's failure to inform purchasers that broker's employee who showed house to purchasers, who obtained purchasers' signatures on contract and who handled other details of sale of real estate was not broker's authorized salesman was culpable omission on part of broker that amounted to use of unlicensed salesman, in violation of statute. *Greene* v. *Real Estate Commission* (D.C. App. 1966, 218 A. 2d 508).

Admission against interest

In prosecution for acting as a real estate broker without a license, affidavit of individual defendant, who was president of corporate defendant, reciting nature of one of sales transactions, was admissible as an admission against interest. *Underwriters Construction Company, Inc., et al.* v. *District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

Construction of chapter

Purpose of Real Estate and Business Brokers' License Act of District of Columbia is to protect public against evil, fraudulent, and dishonest practices which sometimes occur in real estate brokerage business, and although act is in derogation of common law, it must be construed in the light of such purpose. *V. Wickersham et ano.* v. *T. D. Harris* (1963, 313 F. 2d 468, Tenth Circuit), The provisions of this chapter must be construed in light of purpose of this chapter and evils it was designed to protect against. *Eberman* v. *Massachusetts Bonding & Ins. Co.* (D. C. Mun. App. 1945, 41 A. 2d 844).

Evidence

In prosecution for acting as a real estate broker without a license, agreement between purchaser and another, to which individual defendant was a signatory, for construction of a house on a lot and a sales contract for one of lots signed by individual defendant as president of corporate defendant, were relevant to question of whether defendants had made a sale of lot. *Underwriters Construction Company, Inc., et al.* v. *District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

—— Sufficiency

Evidence of culpable fault on part of broker for unlawful acts of unlicensed employee as salesman, violation of statute forbidding broker's use of unlicensed salesman and failure to obtain purchasers' consent to contract change was sufficient to sustain real estate commission's finding that broker was incompetent, justifying suspension of his license. *Greene* v. *Real Estate Commission* (D.C. App. 1966, 218 A. 2d 508).

Evidence was sufficient to sustain conviction for acting as real estate broker without a license. *Draisner* v. *District of Columbia* (D. C. Mun. App. 1957, 131 A. 2d 297).

Police power

The Real Estate and Business Brokers' License Act of District of Columbia constitutes an exercise of police power for protection of public interest. *V. Wickersham et ano.* v. *T. D. Harris* (1963, 313 F. 2d 468, Tenth Circuit).

The protection of public interest is the basis for exercise of police power in enactment of this chapter. *Eberman* v. *Massachusetts Bonding & Ins. Co.* (D. C. Mun. App. 1945, 41 A. 2d 844).

Prosecution for acting without license

In prosecution for acting as a real restate broker without first having obtained a license from Real Estate Commission, conflicting evidence as to whether defendant was acting as a broker or as an attorney warranted submission of such question to the jury. *Wagman* v. *District of Columbia* (D. C. Mun. App. 1959, 148 A. 2d 308).

In prosecution for acting as real estate broker without first having obtained a license from Real Estate Commission, whether defendant was acting as a broker or as an attorney was a question of fact for determination by jury. *Id.*

In prosecution for acting as real estate broker without a license, instruction which conditioned defendant's acquittal on findings that defendant was attempting to negotiate the purchase of the real estate for himself only or that two persons named in the contracts as purchasers were only straw parties acting on behalf of the defendant only was proper. *Draisner* v. *District of Columbia* (D. C. Mun. App. 1957, 131 A. 2d 297).

Sufficiency of information

Information charging defendants with acting as real estate brokers without a license was sufficient to inform them of charge against them and they were not prejudiced by denial of a motion for bill of particulars and to correct or dismiss the information. *Underwriters Construction Company, Inc., et al.* v. *District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

Summary judgment

It was error to grant summary judgment for defendants on ground that claim of plaintiff rested on services as real estate broker in violation of statute because plaintiff was not licensed as broker, where legal issues could not be resolved without affording plaintiff opportunity to demonstrate facts in support of his claim that he was member of joint venture with defendants at some point before he engaged in what would be illegal activity except by licensed brokers and principals. *I. I. Davidson* v. *M. B. Coyne et al.* (1965, 347 F. 2d 471, 120 U.S. App. D.C. 377).

§ 45–1402. Definitions—Exceptions.

Whenever used in this chapter "real-estate broker" means any person, firm, association, partnership, or corporation (foreign or domestic) who, for another

and for a fee, commission, or other valuable consideration, or who, with the intention or in the expectation or upon the promise of receiving or collecting a fee, commission, or other valuable consideration, lists for sale, sells, exchanges, purchases, rents, or leases or offers or attempts or agrees to negotiate a sale, exchange, purchase, lease, or rental of an estate or interest in real estate, or collects or offers or attempts or agrees to collect rent or income for the use of real estate, or negotiates or offers or attempts or agrees to negotiate, a loan secured or to be secured by a mortgage, deed of trust, or other encumbrance upon or transfer of real estate, or who is engaged in the business of erecting houses or causing the erection of houses for sale on his, their, or its land and who sells, offers, or attempts to sell such houses, or who, as owner or otherwise and as a whole or partial vocation, sells, or through solicitation, advertising, or otherwise, offers or attempts to sell or to negotiate the sale of any lot or lots in any subdivision of land comprising ten lots or more: *Provided, however,* That this definition shall not apply to the sale of space for advertising of real estate in any newspaper, magazine, or other publication. A "business-chance broker" within the meaning of this chapter is any person, firm, partnership, association, copartnership, or corporation who for a compensation or valuable consideration sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the good will of a business for others.

"Real-estate salesman" means a person employed by a licensed real-estate broker to list for sale, sell, or offer for sale, to buy or offer to buy, or to negotiate the purchase or sale, or exchange of real estate, or to negotiate a loan on real estate, or to lease or rent or offer to lease, rent, or place for rent, any real estate, or collect or offer or attempt to collect rent or income for the use of real estate.

"Business-chance salesman" means any person employed by a licensed business-chance broker to list for sale, sell, or offer for sale, to buy or offer to buy, to lease or offer to lease, or to negotiate the purchase or sale or exchange of a business, business opportunity, or good will of an existing business for or in behalf of such business-chance broker.

Persons employed by a licensed broker in a clerical capacity or in subordinate positions who receive a fixed compensation and who receive no additional commission or compensation for specific acts of renting or leasing real estate and who do not sell or exchange, or offer or attempt to sell or exchange, real estate or a business, business opportunity, or the good will of a business shall not be required to obtain licenses.

One act for a compensation or valuable consideration of buying or selling real estate for or of another, or offering for another to buy, sell, or exchange real estate, or leasing, renting, or offering to lease or rent real estate, or negotiating or offering to negotiate a loan secured by a mortgage, deed of trust, or other encumbrance upon or transfer of real estate, except as herein specifically excepted, shall constitute a person, firm, partnership, copartnership, association, or corporation performing, or offering, or attempting to perform any of the acts enumerated herein, a real-estate broker, unless such act shall be performed or offered or attempted to be performed by a person for and in behalf of a real-estate broker in which event such act shall constitute such person a real-estate salesman.

One act for a compensation or valuable consideration of buying, selling or leasing or exchanging a business, business opportunity, or the good will of a business for or of another, or offering for another to buy, sell, exchange, or lease a business, business opportunity, or the good will of a business, except as herein specifically excepted, shall constitute the person, firm, partnership, copartnership, association, or corporation performing or offering or attempting to perform any of the acts enumerated herein, a business-chance broker, unless such act shall be performed or offered or attempted to be performed by a person for or on behalf of a business-chance broker, in which event such act shall constitute such person a business-chance salesman.

The provisions of this chapter shall not apply to receivers, referees, administrators, executors, guardians, trustees, or other persons appointed or acting under the judgment or order of any court; or public officers while performing their official duty, or attorneys at law in the ordinary practice of their profession; nor to any person, copartnership, association, or corporation, who, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, or to the regular officers and employees thereof, with respect to the property so owned or leased, where such acts are performed in the regular course of, or as an incident to, the management of such property and the investments therein, except as otherwise provided in this chapter.

Every provision of this chapter applying specifically to an applicant or application for a license as a real-estate broker or a real-estate salesman, and to a real-estate license, and to a licensee licensed as a real-estate broker or a real-estate salesman, and to anyone acting in the capacity of a real-estate broker or a real-estate salesman without a license, shall likewise apply in a similar manner, respectively, to every applicant and application for a license as a business-chance broker or a business-chance salesman, and to every business-chance license, and to every licensee licensed as a business-chance broker or a business-chance salesman, and to anyone acting in the capacity of a business-chance broker or a business-chance salesman without a license. (Aug. 25, 1937, 50 Stat. 787, ch. 760, § 2; Aug. 10, 1939, 53 Stat. 1352, ch. 664, § 3.)

AMENDMENT

1939—Act Aug. 10, 1939, added in the first paragraph the words beginning "or who is engaged" and continuing to the colon before the words "Provided, however"; deleted the following words which concluded the first paragraph, "as a whole or partial vocation"; deleted the following words which concluded the second paragraph, "for or in behalf of such real-estate broker"; added the third paragraph; deleted from the fourth paragraph the words "as collectors, or in similar subordinate and administrative positions" and inserted in lieu thereof the words that now follow the word "capacity" and conclude the paragraph except the last seven words; added in the fifth paragraph the words "or negotiating or offering to negotiate a loan secured by a mortgage, deed of trust, or other incumbrance upon or transfer of real estate" and the

words beginning "unless such act" and concluding the said paragraph; added the sixth paragraph; added in the seventh paragraph the words beginning "nor to any person" and concluding the said paragraph; and, added the eighth paragraph.

CROSS REFERENCE

Other exemptions, see § 45–1412.

NOTES TO DECISIONS

Acts

Under this chapter limiting the causes for suspension or revocation of a license to obtaining a broker's license by false or fraudulent representations, and "where the licensee, in performing or attempting to perform any of the acts mentioned herein", has done certain things, the "acts" referred to are those activities set forth in this section defining the meaning of real estate broker and real estate salesman, which activities deal with sale, purchase, or rental of realty and negotiation of loans on realty by one who acts for another and for a consideration. *Eberman* v. *Massachusetts Bonding & Ins. Co.* (D. C. Mun. App. 1945, 41 A. 2d 844).

Admission against interest

In prosecution for acting as a real estate broker without a license, affidavit of individual defendant, who was president of corporate defendant, reciting nature of one of sales transactions, was admissible as an admission against interest. *Underwriters Construction Company, Inc., et al.* v. *District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

Evidence

In prosecution for acting as a real estate broker without a license, agreement between purchaser and another, to which individual defendant was a signatory, for construction of a house on a lot and a sales contract for one of lots signed by individual defendant as president of corporate defendant, were relevant to question of whether defendants had made a sale of lot. *Underwriters Construction Company, Inc., et al.* v. *District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

—— Sufficiency

Evidence was sufficient to sustain conviction for acting as real estate broker without a license. *Draisner* v. *District of Columbia* (D. C. Mun. App. 1957, 131 A. 2d 297).

Prosecution for acting without license

In prosecution for acting as a real estate broker without first having obtained a license from Real Estate Commission, conflicting evidence as to whether defendant was acting as a broker or as an attorney warranted submission of such question to the jury. *Wagman* v. *District of Columbia* (D. C. Mun. App. 1959, 148 A. 2d 308).

In prosecution for acting as real estate broker without first having obtained a license from Real Estate Commission, whether defendant was acting as a broker or as an attorney was a question of fact for determination by jury. *Id.*

In prosecution for acting as real estate broker without a license, instruction which conditioned defendant's acquittal on findings that defendant was attempting to negotiate the purchase of the real estate for himself only or that two persons named in the contracts as purchasers were only straw parties acting on behalf of the defendant only was proper. *Draisner* v. *District of Columbia* (D. C. Mun. App. 1957, 131 A. 2d 297).

Relationship of parties

Plaintiff, who did not have authority to submit, accept, or reject, offers or proposals but who did have authority to procure a prospective purchaser for property and who did find a prospective purchaser who in turn entered into a contract for purchase of land, was a "broker" within meaning of statute requiring licenses from one acting for compensation or consideration in buying or selling real estate for another and he could not recover for his services when he was not so licensed. *V. Wickersham et ano.* v. *T. D. Harris* (1963. 313 F. 2d 468, Tenth Circuit).

In action to recover secret profit allegedly made by broker in purchasing plaintiff's property on broker's own account and reselling it at a profit, evidence required denial of recovery on ground that there was no evidence establishing relationship of real estate broker and client between the parties. *Urciolo* v. *O'Connor* (1945, 149 F. 2d 386, 80 U.S. App. D.C. 112).

Where salesman employed by broker was entitled to one-half of the commissions on all sales either made or procured by him, a fiduciary relationship existed with the necessary incidents of good faith and mutual trust, and right of salesman to commission must be determined on such basis rather than the basis of rival or competing brokers. *Henderson* v. *Porter* (D. C. Mun. App. 1947, 52 A. 2d 779).

Sufficiency of information

Information charging defendants with acting as real estate brokers without a license was sufficient to inform them of charge against them and they were not prejudiced by denial of a motion for bill of particulars and to correct or dismiss the information. *Underwriters Construction Company, Inc., et al.* v. *District of Columbia* (D.C. Mun. App. 1961, 170 A. 2d 236).

§ 45–1403. Real Estate Commission created—Membership—Seal—Records—Compensation.

There is hereby created the Real Estate Commission of the District of Columbia. The Commissioners of the District of Columbia shall appoint two persons, not more than one of whom shall have been actively engaged in or closely connected with the business or vocation of real-estate broker or real-estate salesman within five years immediately prior to appointment, who shall serve as members of said Real Estate Commission of the District of Columbia. In addition thereto, the assessor of the District of Columbia shall serve, ex-officio, as a member of said Real Estate Commission but without added compensation for his services as such. One member of said Commission shall be appointed for a term of one year; one member shall be appointed for a term of two years, and until their successors are appointed and qualified; thereafter the term of the members of said Commission shall be for three years and until their successors are appointed and qualified. Members to fill vacancies shall be appointed for the unexpired term. The Commissioners of the District of Columbia may remove members of the Real Estate Commission at any time for cause.

The assessor, ex-officio, shall be the chairman of said Real Estate Commission, which is hereby authorized and empowered to elect a treasurer of said Commission and to do all things necessary and convenient for carrying into effect the provisions of this chapter and the rules and regulations promulgated from time to time by the Commissioners.

The Commissioners of the District of Columbia shall employ and remove at their pleasure a secretary and such assistants as shall be deemed necessary to discharge the duties imposed by the provisions of this chapter and shall prescribe their duties and fix their compensation in accordance with the provisions of section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters].

The Commissioners of the District of Columbia shall provide for the use of the Real Estate Commission such office space, furniture, stationery, fuel, light, and other proper conveniences as shall be reasonably necessary for carrying out the provisions of this chapter.

The Commission shall adopt a seal with such design as it may prescribe engraved thereon by which it

shall authenticate its proceedings. Copies of all records and papers in the office of the Commission, duly certified and authenticated by the seal of said Commission, shall be received in evidence in all courts equally and with like effect as the original. The Commission shall keep a record of all its proceedings and a complete stenographic record of all hearings authorized under this chapter.

All records kept in the office of the Commission under authority of this chapter shall be open to public inspection under reasonable rules and regulations to be prescribed by the Commission.

The compensation of members of the Commission, except the ex officio member, shall be $10 each for personal attendance at each meeting, but shall not exceed for any member $1,500 per annum.

The payment of such allowance shall be made from any unexpended balance in the treasury of said Commission remaining on June 30 of the year during which the services have been rendered, and if the unexpended balance is insufficient to meet the total amount of such allowance the rate of compensation shall be reduced to a rate which will permit payment from such unexpended balance. Such expenses shall in no event exceed the total receipts; and if at the close of each fiscal year any funds unexpended in excess of the sum of $1,000 shall be paid into the treasury of the United States to the credit of the District of Columbia: *Provided,* That no expenses incurred under this chapter shall be a charge against the funds of the United States or the District of Columbia.

All fees and charges payable under the provisions of this chapter shall be paid to the treasurer of the Commission. The Commission is hereby authorized to refund any license fee or tax, or portion thereof, erroneously paid or collected under this chapter.

It shall be the duty of the auditor of the District of Columbia to audit the accounts of the Commission at the end of each fiscal year and make a report thereof in writing to the Commissioners of the District of Columbia. The said auditor shall have free access to all books of accounts, papers, and records of the said Commission.

The Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce, revise, or repeal whatever reasonable regulations may be necessary to carry out the provisions of this chapter. (Aug. 25, 1937, 50 Stat. 788, ch. 760, § 3; Aug. 10, 1939, 53 Stat. 1354, ch. 664, § 4; Oct. 28, 1949, 63 Stat. 972, ch. 782 title XI, § 1106(a).)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENTS

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

1939—Act Aug. 10, 1939, substituted "The compensation of members of the Commission, except the ex officio member, shall be $10 each for personal attendance at each meeting, but shall not exceed for any member $1,500 per annum" for "Each member of the Commission, except the ex-officio member, shall receive an allowance at the rate of $10 for each day of seven hours such member is actually engaged in the performance of duties as a member of the Commission: Provided, however, That no member shall receive in any one year a sum greater than $2,000."

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorg. Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952. The function of auditing the accounts of the Real Estate Commission was transferred from the Auditor of the District of Columbia to the Internal Audit Officer, Department of General Administration by Reorg. Order No. 19. These orders were issued by the Board of Commissioners pursuant to Reorg. Plan No. 5 of 1952. The orders and plan are set out in the Appendix to title 1, Administration.

CROSS REFERENCES

Commissioners' authority to determine and pay honorariums to various board members and commissioners see §§ 1–254 to 1–259.

Nonresident brokers and salesmen, see § 45–1410.

Persons exempted from operation of this act, see §§ 45–1402, 45–1412.

Refund of fees and taxes generally, see § 47–1016.

Refunds of fees when license refused, see § 47–1017.

Rules and regulations for obtaining copy of stenographic notes of proceedings, see § 45–1409.

NOTES TO DECISIONS

Reasonable police regulations

Congressional legislation on particular subject can preclude regulation of that subject by district commissioners, but absent such unique limitations or congressional occupation of field, commissioners in exercising local legislative power may promulgate reasonable and usual police regulations. *J. Filippo* v. *Real Estate Com. of the District of Columbia* (D.C. App. 1966, 223 A. 2d 268).

Limitation on scope of reasonable and usual police regulations which may be adopted by District commissioners is primarily functional; such regulations must be necessary for protection of lives, limbs, health, comfort, and quiet of persons in protection of property within district. *Id.*

Police regulations promulgated by District commissioners must be reasonable, and may not extend to subject which does not endanger, disturb, annoy or incommode people and may not produce results at variance with purposes contemplated by joint resolution. *Id.*

District commissioners' regulation is reasonable if its subject is one which is naturally productive of material discomfort to persons of ordinary susceptibilities, tastes, and habits. *Id.*

District of Columbia fair housing regulations were "reasonable and usual police regulations" within authority delegated to commissioners. *Id.*

Validity of membership

District of Columbia Board of Commissioners had power, under Reorganization Plan No. 5 of 1952, to determine number and composition of Real Estate Commission, and Commission, composed of five members as specified in Reorganization Order No. 59, had jurisdiction to suspend real estate broker's license. *K. Kennedy* v. *Real Estate Commission etc.* (D.C. App. 1964, 202 A. 2d 774.)

§ 45–1404. Qualifications for license.

No license under the provisions of this chapter shall be issued to any person who has not attained the age of twenty-one years, nor to any person who cannot read, write, and understand the English language; nor until the Commission has received

satisfactory proof that the applicant is trustworthy and competent to transact the business of a real-estate broker or real-estate salesman or business-chance broker or business-chance salesman in such a manner as to safeguard the interests of the public: *Provided, however,* That a salesman shall have six months from the date of the issuance of his original license to prove his competency, and failure to prove his competency to the satisfaction of the Commission within that period will automatically cancel his original license or any renewal thereof.

In determining competency, the Commission shall require proof that every applicant for a license has a general and fair understanding of the obligations between principal and agent, as well as of the provisions of this chapter; and that an applicant for a license as a real-estate broker has a fair understanding of the general purposes and effect of deeds, mortgages, and contracts for the sale or leasing of real estate, and of elementary real-estate practices; and that an applicant for a license as a business-chance broker has a fair understanding of the general purposes and effect of bills of sale, chattel mortgages and trusts, and the provisions of the law governing sales in bulk.

No license shall be issued to any person, firm, partnership, copartnership, association, or corporation whose application has been rejected in the District of Columbia or any State within three months prior to date of application, or whose real-estate license has been revoked in the District of Columbia or any State within one year prior to date of application. (Aug. 25, 1937, 50 Stat. 789, ch. 760, § 4; Aug. 10, 1939, 53 Stat. 1354, ch. 664, § 5.)

AMENDMENT

1939—Act Aug. 10, 1939, added the words "or business-chance broker or business-chance salesman" and the proviso in the first paragraph; rearranged the wording of the first part of the second paragraph and added the words beginning "and that an applicant," the second time the said words appear, and concluding the said paragraph.

CROSS REFERENCE

Disqualification for conviction of crime, see § 45–1415.

§ 45–1405. Application for license—Requirements—Location of business—Members—Individual broker's and real-estate salesman's license—Bond—Form, conditions.

Every applicant for a license under the provisions of this chapter shall apply therefor in writing upon blanks furnished by the Real Estate Commission.

The application of every person for a real-estate broker's license or a real-estate salesman's license shall be accompanied by the recommendation of at least two residents of the District of Columbia, real-estate owners, who have owned real estate in the District of Columbia for a period of at least one year and who are not related to the applicant but who have personally known the applicant for a period of at least six months prior to the date of application, which recommendation shall certify that the applicant bears a good reputation for honesty, truthfulness, fair dealing, and competency, and recommend that a license be granted to the applicant.

The application of every firm, partnership, copartnership, association, or corporation for a real-estate broker's license shall state the location of the place or places for which said license is desired and set forth the period of time, if any, which said applicant has been engaged in the real-estate business, together with a complete list of all former places where the applicant may have been engaged in any business for a period of thirty days or more during the five years preceding date of application, accounting for such entire period. Such applications shall also state the name and residence of each individual member or officer of said applicant who actively participates in the brokerage business thereof.

The application of every individual member or officer of a firm, partnership, copartnership, association, or corporation for a real-estate broker's license shall state the full name and residence address of the applicant and the full name and business address of the firm, partnership, copartnership, association, or corporation with which he is or will be associated, the length of time he has been so associated, and in what capacity. Such application shall also state the period of time, if any, during which said applicant has been engaged in the real-estate business, together with a complete list of all former places where the applicant may have resided and all former places where the applicant may have been engaged in any business for a period of thirty days or more during the five years preceding date of application, accounting for such entire period.

The application of each person for an individual real-estate broker's license shall state the full name of the applicant, his business address, and residence address. Such application shall also state the period of time, if any, during which said applicant has been engaged in the real-estate business, together with a complete list of all former places where the applicant may have resided and all former places where the applicant may have been engaged in any business for a period of thirty days or more during the five years preceding the date of application, accounting for such entire period.

The application of every person for a real-estate salesman's license shall state the full name of the applicant, his residence address, and the name and business address of the real-estate broker by whom he is or will be employed. Such application shall also state the period of time, if any, during which said applicant has been engaged in the real-estate business, together with a complete list of all former places where the applicant may have resided and all former places where the applicant may have been engaged in any business for a period of thirty days or more during the five years preceding the date of application, accounting for such entire period. Such application shall be accompanied by a written statement by the broker by whom the applicant is employed or is about to be employed, stating that in his opinion the applicant is honest, truthful, and of good reputation, and recommending that the license be granted to the applicant.

Every application for a license under the provisions of this chapter shall be sworn to by the applicant and shall be accompanied by the license fee herein prescribed. In the event that the Commission does not approve the application for a license the fee shall be returned to the applicant.

Every application for a license shall be accompanied by a bond in the sum of $2,500 in the case of a broker and $1,000 in the case of a salesman, running to the District of Columbia executed by a surety company duly authorized to do business in the District of Columbia: *Provided, however,* That no bond shall be required of any firm, partnership, copartnership, association, or corporation when the application of every member or officer of such firm, partnership, copartnership, association, or corporation actively participating in the brokerage business thereof is accompanied by a bond as provided for in this section. Said bond shall be in form approved by the Commission, and conditioned that the applicant shall conduct himself and his business in accordance with the requirements of this chapter; and for his failure so to do any person aggrieved thereby shall have, in addition to his right of action against the principal thereof, a right to bring suit against the surety on said bond either alone or jointly with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, representation, transaction, or conduct of the principal which may be prohibited by this chapter or enumerated as one of the causes for suspension or revocation of a license granted hereunder. If a recovery be had on any bond the licensee shall restore the bond to its original amount.

Nothing in this chapter shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished by any prior recovery or recoveries as the case may be.

No suit or action against the surety on any such bond shall be brought later than one year from the accrual of the cause of action thereon. The surety may terminate its liability under such bond by giving thirty days' written notice thereof, served either personally or by registered mail, to the principal and to the Commission; and upon giving such notice the surety shall be discharged from all liability under such bond for any act or omission of the principal occurring after the expiration of thirty days from the date of service of such notice. Unless on or before the expiration of such period the principal shall duly file a new bond in like amount and conditioned as the original in substitution of the bond so terminated, the license of the principal shall likewise terminate upon the expiration of such period. Upon making any payment on account of its bond, the surety shall immediately notify the Commission

In the event the surety becomes insolvent or a bankrupt, or ceases to do business or ceases to be authorized to do business in the District of Columbia, the principal shall, within ten days after notice thereof, given by the Commission, duly file a new bond in like amount and conditioned as the original and if the principal shall fail so to do the license of such principal shall terminate.

The Commission, with due regard to the paramount interest of the public, may require other reasonable proof of the honesty, truthfulness, and integrity of the applicant. (Aug. 25, 1937, 50 Stat. 789, ch. 760, § 5; Aug. 10, 1939, 53 Stat. 1354, ch. 664, § 6.)

AMENDMENT

1939—Act Aug. 10, 1939, deleted "executed by two good and sufficient sureties to be approved by the Commission, or" following "Columbia" as said word first appears in the eighth paragraph; and, added the eleventh paragraph relating to the insolvency or bankruptcy of the surety.

CROSS REFERENCE

Refund of fees generally, see § 47–1017.

NOTES TO DECISIONS

Accrual of cause of action

Owners' cause against surety of real estate broker engaged by them to manage their property and to protect them from foreclosure by forwarding rents collected to holder of first trust accrued when owners were notified of default by broker and of intention of holder or first trust to foreclose where there was nothing in agreement which would indicate that demand upon broker was prerequisite to performance, and action not brought within one year statutory period was barred. *Phoenix Assurance Company of N.Y.* v. *S. and F. Basil* (D.C. App. 1963, 189 A. 2d 365).

Bond, actions on

That plaintiffs recovered various sums on account of rents collected for them by decedent but never accounted for by decedent in an action on bond under this section given by decedent did not bar plaintiffs from asserting an equitable lien on the amount of a special rent account in the hands of decedent's administratrix as a trust fund, in view of provision of this section that the aggrieved person's remedy against the surety is in addition to his right of action against the principal, since remedies were cumulative and nothing less than complete satisfaction of plaintiffs' claims would operate as a bar. *Brown* v. *Christman* (1942, 126 F. 2d 625, 75 U.S. App. D.C. 203).

Where District of Columbia Commissioners had never exercised their enlarged authority under Additional Powers Act § 1–244(b), and as a consequence § 2–1404 providing that District of Columbia shall be kept harmless from consequences of any and all acts of said licensee plumber during period covered by plumber's indemnity bond was still in effect, purchasers of property upon which sewer pipe was allegedly negligently installed by plumber could not bring action against plumber's surety on indemnity bond which named only District of Columbia as obligee therein. *Bolten* v. *Clarke and Aetna Casualty & Surety Co.* (D.C. Mun. App. 1956, 125 A. 2d 60).

Where contract between investor and real estate broker involved nothing more than the entrusting of sum of money to broker by investor for investment, and no real estate transaction was involved, investor could not recover for loss of money entrusted to broker from broker's surety on broker's bond. *Brooks* v. *United States Fidelity & Guaranty Co.* (D.C. Mun. App. 1954, 109 A. 2d 377).

Recovery on bond

Real estate broker could not recover from surety on real estate salesman's bond of broker's sales manager who had failed to account for money received by him from broker's salesmen who had obtained the money from prospective purchasers. *E. D. Collier* v. *Hartford Accident & Indemnity Co.* (D.C. Mun. App. 1962, 180 A. 2d 846).

A licensed broker who was owed a commission by another broker licensed in the District of Columbia and in Maryland, based on plaintiff broker's sale of certain realty located in Maryland, was not a "person aggrieved" under this section requiring a realty broker to secure a bond which "any person aggrieved" shall have a right to sue on, nor was broker a member of the "public" under Maryland statute providing that every licensed realty broker shall provide a corporate bond for the use and benefit of the "public", and therefore, broker was not entitled to recover on either District of Columbia bond or Maryland bond. *Gilewicz* v. *Home Indemnity Co.* (D. C. Mun. App. 1959, 150 A. 2d 627).

A salesman of real estate broker who dealt with him as employer or business associate could not recover from surety on broker's bond the balance of commissions which broker failed to pay to salesman, since this section providing for bond to protect "any person aggrieved" by broker's conduct which constitutes fraudulent or dishonest dealings, limits recovery on bond to members of the

public. *Eberman* v. *Massachusetts Bonding & Ins. Co.* (D. C. Mun. App. 1945, 41 A. 2d 844).

No liability exists on the bond since no obligation arises on the part of a broker to repay until demand is made. Moreover, the regulations of Real Estate Commission cannot be extended to the surety. *Cundiff* v. *Wills* and *Martin* v. *Wills* (D. C. Mun. App. 1950, 76 A. 2d 55).

§ 45–1406. Procedure when license refused.

The Commission, after an application in proper form has been filed, shall, before refusing to issue a license, set the application down for a hearing and determination as provided in section 45–1409. (Aug. 25, 1937, 50 Stat. 791, ch. 760, § 6.)

§ 45–1407. Details relating to license.

The Commission shall cause to be issued to each licensee a license in such form and size as shall be prescribed by the Commission. Every license shall show the name and address of the licensee, and if licensee is a member or officer of a firm, partnership, copartnership, association, or corporation, the full name and address of such firm, partnership, copartnership, association, or corporation shall also be shown on said license. Licenses issued to real-estate salesmen shall in addition show the name and address of the real-estate broker by whom the said salesmen is or will be employed. Each license shall have imprinted thereon the seal of the Commission, and in addition to the foregoing shall contain such matter as shall be prescribed by the Commission. The license of each real-estate salesman shall be delivered or mailed to the real-estate broker by whom such real-estate salesman is employed and shall be kept in the custody and control of such broker. It shall be the duty of each real-estate broker to conspicuously display his license in his place of business.

At any time within six [6] months, but not thereafter, after the issuance of an original license the Commission may, upon its own motion, and shall, upon the verified complaint, in writing, of any person, provided such complaint, or such complaint together with evidence, documentary or otherwise, presented therewith, shall make out a prima facie case that the licensee is unworthy to hold such license, notify the licensee, in writing, that the question of his honesty, competency, truthfulness, and integrity will be reopened and determined de novo. Such written notice may be served by delivery thereof personally to the licensee or by mailing same by registered mail to the last known business address of the licensee. Thereupon the Commission may require and procure further proof of the licensee's trustworthiness and competency, and if such proof shall not be satisfactory such license shall be recalled and shall thereafter be null and void. Upon the recall of any such license it shall be the duty of the licensee to surrender to the Commission such license.

The fee for an original broker's license and every renewal thereof shall be $30: *Provided, however,* That the fee for an original broker's license and every renewal thereof for individual members, partners, and officers of firms, partnerships, and corporations shall be $30 for the first member, partner, or officer to be designated by the firm, partnership, or corporation and $10 for each additional member, partner, or officer of such firm, partnership, or corporation.

No fee shall be charged for any original license or renewal thereof issued to any firm, partnership, copartnership, association, or corporation all of whose members or officers actively participating in the brokerage business thereof have been issued a broker's license.

The fee for an original real-estate salesman's license and every annual renewal thereof shall be $10.

The fees provided herein for any original license shall be reduced by one-half in all cases where the application for such original license is filed between January 1 and July 1 of any year.

Every license shall expire on the 1st day of July of each year, except that the original or initial licenses, first issued under the provisions of this chapter shall expire on the 1st day of July, 1938, subject, however, to revocation as hereinbefore provided.

The Commission shall cause to be issued a new license for each ensuing year, in the absence of any reason or condition which might warrant the refusal of the granting of a license, upon receipt of the written request of the applicant and the annual fee therefor, as herein required: *Provided, however,* That an applicant who, on or before July 1, fails to file said written request and pay the annual fee must comply with all the provisions of this chapter applicable to an original applicant except that the Commission may waive the requirement of furnishing proof of competency. The revocation of a broker's license shall automatically suspend every salesman's license granted to any person by virtue of his employment by the broker whose license has been revoked, pending a change of employer and the issuance of a new license. Such new license shall be issued without charge if granted during the same license year in which the original license is granted.

No person, firm, partnership, copartnership, association, or corporation engaged in the business or acting in the capacity of a real-estate broker or a real-estate salesman, or a business-chance broker or a business-chance salesman, within the District of Columbia shall bring or maintain any action in the courts of the District of Columbia for the collection of compensation for any services performed as a real-estate broker or a real-estate salesman or a business-chance broker or business-chance salesman, or enforcement of any contract relating to real estate without alleging and proving that such person, firm, partnership, copartnership, association, or corporation was a duly licensed real-estate broker or real-estate salesman, or business-chance broker or business-chance salesman, at the time the alleged cause of action arose.

Every broker licensed hereunder shall maintain a place of business in the District of Columbia. If a broker maintains more than one place of business within the District of Columbia, a duplicate license shall be issued to such broker for each branch office maintained; and there shall be no fee charged for any such duplicate license.

When a broker changes the location of his principal place of business he must immediately notify the

Commission in writing and return to the Commission his license together with the licenses of all salesmen in his employ, and the Commission shall issue a new license to the broker and to each of the salesmen without charge. Failure to notify the Commission and to return his license when the location of his principal place of business is changed, will automatically cancel the broker's license and the licenses of all salesmen in his employ. However, new licenses for the unexpired term may be issued by the Commission without the payment of any additional fee, provided a written request therefor accompanied by a new bond is filed.

When any real-estate salesman shall be discharged or shall terminate his employment with the real-estate broker by whom he is employed it shall be the duty of such real-estate broker to immediately deliver or mail by registered mail to the Commission such real-estate salesman's license. The real-estate broker shall at the time of delivering or mailing such real-estate salesman's license to the Commission, address a communication by registered mail to the last-known residence address of such real-estate salesman, which communication shall advise such real-estate salesman that his license has been delivered or mailed to the Commission. A copy of such communication to the real-estate salesman shall accompany the license when mailed or delivered to the Commission. It shall be unlawful for any real-estate salesman to perform any of the acts contemplated by this chapter, either directly or indirectly, under authority of said license from and after three days following such delivery or mailing of the said license by said broker to the Commission.

When a salesman shall be discharged or shall terminate his employment with the broker by whom he is employed, it shall be the duty of such salesman to immediately notify the Commission, and it shall be unlawful for him to perform any of the acts contemplated by this chapter either directly or indirectly from and after such termination of employment until such time as he has been employed by another licensed broker and a license has been reissued him by the Commission.

There shall be no additional fee for the reissuance of a salesman's license necessitated by the change of employers nor shall such change work a revocation or require a renewal of the salesman's bond.

A license issued to an individual cannot be transferred to another individual. However, an individual licensed as a broker may, upon written request to the Commission, change his status to that of an individual broker or to that of a partner of a partnership, or to that of an officer of a corporation, for any unexpired term of his license, without the payment of any additional fee, and such change shall not work a revocation or require a renewal of the bond of any such broker. This provision shall not be applicable to any real-estate broker in respect to a change of license to that of a business chance broker or vice versa.

No license shall be issued to any firm, partnership, association, or corporation unless every individual member, partner or officer of such firm, partnership, association, or corporation who actively participates in the brokerage business thereof is licensed as a broker. (Aug. 25, 1937, 50 Stat. 791, ch. 760, § 7; Aug. 10, 1939, 53 Stat. 1354, ch. 664, § 7.)

AMENDMENT

1939—Act Aug. 10, 1939, deleted the figure "$50" and inserted in lieu thereof the figure "$30," and added the rest of the third paragraph; added the sixth paragraph; added the proviso on the end of the first sentence of the eighth paragraph; added the words "or a business-chance broker or a business-chance salesman" as they appear in the ninth paragraph; deleted the words "real estate" as they appeared in the 1937 act as the second and third words of the first sentence and the third and fourth words of the second sentence of the tenth paragraph; reworded the eleventh paragraph to provide as it now appears, the former paragraph having provided that notice be given "by each licensee" and not having provided for a new bond; and, added the thirteenth, fifteenth, and sixteenth paragraphs.

CROSS REFERENCES

Commissioners authorized to increase or decrease, from time to time, the fees specified in this section, see §§ 1–252, 1–253.

Revocation or suspension of licenses, see § 45–1408.

NOTES TO DECISIONS

Commission's authority to suspend

Where real estate broker's license was renewed on July 1, 1958, for one year and on July 2, he was served with an order of Real Estate Commission charging him with three acts of alleged misconduct occurring prior to July 1, 1958, commission had power to suspend broker's license by reason of charges of misconduct even though commission had knowledge thereof on renewal date of license. *Eiland* v. *Ahearn et al., etc.* (D. C. Mun. App. 1959, 153 A. 2d 312).

Prerequisite to suit

This section prohibiting broker or salesman from maintaining action for compensation as such without alleging and proving that he was duly licensed when alleged cause of action arose does not mean that one earning commission for services in procuring purchaser of realty while duly licensed as real estate salesman cannot recover commission because of his voluntary surrender of license on resigning as salesman in broker's office before execution of sale contract. *Riddell* v. *Howar* (D.C. Mun. App. 1952, 90 A. 2d 925).

Proof of license

In action for real estate broker's commission on sale of realty, where answer admitted allegation that broker was duly licensed, testimony of broker that he was licensed was sufficient proof without production of the license. *McManus* v. *Newcomb* (D. C. Mun. App. 1948, 61 A. 2d 36).

Relationship of parties

Under statutes requiring real estate broker to have a license and prohibiting a person, who is engaged in business or acting in capacity of real estate broker or salesman, from bringing an action for compensation for any services performed as such without proving that he is licensed, a contract for payment of compensation to an unlicensed broker or salesman for services rendered as such is not merely unenforceable but is void. *V. Wickersham et ano.* v. *T. D. Harris* (1963, 313 F. 2d 468, Tenth Circuit).

Essential feature of real estate broker's conventional employment is to procure a purchaser for property ready, able, and willing to buy at the price and on terms of the listing or at a different price and on different terms mutually agreed upon by owner and purchaser, and it is not a prerequisite to right to compensation that broker conduct negotiations between the parties after they have been brought into contact with each other through his efforts. *Id.*

This section prohibiting broker or salesman from maintaining action for compensation as such without alleging and proving that he was duly licensed when alleged cause of action arose did not bar one who was licensed as real estate salesman in broker's office at time of performing

services in procuring purchaser of realty from recovering half of commission under agreement with broker, though such salesman was not licensed when sale contract was executed after salesman's resignation. *Riddell* v. *Howar* (D.C. Mun. App. 1952, 90 A. 2d 925).

Sufficiency of evidence

Evidence was sufficient to sustain revocation of real estate broker's license for 90 days for substantial misrepresentation, for failing within a reasonable time to account for or to remit money, valuable documents, or other property coming into his possession which belonged to others, and for fraudulent and dishonest dealing. *Eiland* v. *Ahearn et al., etc.* (D. C. Mun. App. 1959, 153 A. 2d 312).

§ 45–1408. Suspension or revocation of license—Causes enumerated.

The Commission may, upon its own motion, and shall, upon the verified complaint in writing of any person, provided such complaint or such complaint together with evidence, documentary or otherwise, presented in connection therewith, makes out a prima facie case, investigate the conduct of any real-estate broker or real-estate salesman, or business-chance broker or business-chance salesman, and shall have the power to suspend or to revoke any license issued under the provisions of this chapter, at any time where the licensee has by false or fraudulent representation obtained a license, or where the licensee, in performing or attempting to perform any of the acts mentioned herein, has—

(a) Made any substantial misrepresentation;

(b) Made any false promises of a character likely to influence, persuade, or induce;

(c) Pursued a continued and flagrant course of misrepresentation, or making of false promises through agents or salesmen, or advertising or otherwise;

(d) Acted for more than one party in a transaction without the knowledge of all parties for whom he acts;

(e) Accepted a commission or valuable consideration as a real-estate salesman or as a business-chance salesman for the performance of any of the acts specified in this chapter from any person, except the broker under whom he is licensed;

(f) Represented or attempted to represent a real-estate broker or a business-chance broker other than the employer, without the express knowledge and consent of the employer;

(g) Failed, within a reasonable time, to account for or to remit any money, valuable documents, or other property coming into his possession which belong to others;

(h) Demonstrated such unworthiness or incompetency to act as a real-estate broker or real-estate salesman or a business-chance broker or a business-chance salesman as to endanger the interests of the public;

(i) While acting or attempting to act as agent or broker, purchased or attempted to purchase any property or interest therein for himself, either in his own name or by use of a straw party, without disclosing such fact to the party he represents;

(j) Been guilty of any other conduct, whether of the same or a different character from that hereinbefore specified, which constitutes fraudulent or dishonest dealing;

(k) Used any trade name or insignia of membership in any real-estate organization of which the licensee is not a member;

(*l*) Disregarded or violated any provisions of this chapter;

(m) Guaranteed or authorized or permitted any broker or salesman to guarantee future profits which may result from the resale of real property, or a business, business opportunity, or the goodwill of any existing business;

(n) Placed a sign on any property offering it for sale or for rent or offering it for sale or rent without the written consent of the owner or his authorized agent;

(*o*) Accepted a compensation from more than one party to a transaction without the knowledge of all the parties to the transaction; or

(p) Failed to restore the bond to its original amount after a recovery on the bond as provided in section 45–1405. (Aug. 25, 1937, 50 Stat. 793, ch. 760, § 8; Aug. 10, 1939, 53 Stat. 1356, ch. 664, § 8.)

AMENDMENT

1939—Act Aug. 10, 1939, added "or business-chance broker or business-chance salesman" in the first paragraph; "or as a business-chance salesman," and deleted "except an employer who is a licensed real-estate broker" and inserted in lieu thereof the last eight words in paragraph (e); added "or a business-chance broker" in paragraph (f); deleted "salesman" and inserted in lieu thereof the words "real-estate salesman or a business-chance broker or a business-chance salesman" in paragraph (h); inserted paragraph (i) in lieu of the former paragraph which read, "Paid or offered to pay a commission or valuable consideration to any person for acts or services in violation of this act, with knowledge of such violation or where reasonable diligence has not been exercised to acquire such knowledge;" added the words "or a business, business opportunity, or the goodwill of any existing business" at the end of paragraph (m); changed the verbs in paragraph (m) and (n) from the present to the past participle; and, inserted paragraph (*o*) in lieu of the former paragraph which read, "Soliciting, selling, or offering for sale real property by offering free lots, or conducting lotteries, or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property."

CROSS REFERENCES

Recall of license, see § 45–1407.

Revocation of license for conviction of crime, see § 45–1415.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, see § 33–418.

NOTES TO DECISIONS

Generally

Statute that empowered real estate commission to revoke or suspend license of broker who has demonstrated such unworthiness or incompetency to act as real estate broker as to endanger interests of public, when reasonably interpreted, punishes only conduct relating to broker's business and not to some outside activity. *Greene* v. *Real Estate Commission* (D.C. App. 1966, 218 A. 2d 508).

Accrual of cause of action

Owners' cause against surety of real estate broker engaged by them to manage their property and to protect them from foreclosure by forwarding rents collected to holder of first trust accrued when owners were notified of default by broker and of intention of holder of first trust to foreclose where there was nothing in agreement which would indicate that demand upon broker was prerequisite to performance, and action not brought within one year statutory period was barred. *Phoenix Assurance Company of N.Y.* v. *S. and F. Basil* (D.C. App. 1963, 189 A. 2d 365).

Amount of recovery

Where broker makes a secret profit at expense of principal, the principal is entitled only to the net, rather than the gross profit realized by broker. *Jay* v. *General Realties Co.* (D. C. Mun. App. 1946, 49 A. 2d 752).

Where broker secretly purchased property for herself without informing principal and later resold property at a profit, broker was entitled to credit for $650 paid for repairs and for $400 paid as commission on resale of the property. *Id.*

The seller is not entitled by reason of the false representation of the broker to be put in a better position than she would have been had his representation been true. *Murphy* v. *O'Donnell* (D. C. Mun. App. 1949, 63 A. 2d 340).

Commission

Where real estate salesman's efforts produced sale while he was licensed under broker who collected commission, this section making it unlawful for a salesman to accept a commission from anyone other than broker under whom he is licensed, did not bar salesman's recovery for his agreed share of commission even though he had transferred to another broker's office before compensation became due. *Chesser* v. *Kahn* (D. C. Mun. App. 1956, 124 A. 2d 850).

This section providing that license of real estate or business chance salesman or broker may be revoked or suspended for various acts including the act of placing a sign on any property, or offering it for sale or for rent without written consent of the owner or his agent, should not be interpreted to nullify a broker's contract for commission merely because contract is oral. *Shaffer* v. *Berger* (D. C. Mun. App. 1951, 81 A. 2d 469).

Where first broker rather than second broker was suing for commission, the argument that listing upon which second broker acted was not in compliance with this section listing among grounds for revoking a real estate broker's license the offering of property for sale without written consent of owner or owner's authorized agent, was immaterial. *First National Realty Corporation* v. *Blackwell Realty Co., Inc.* (D. C. Mun. App. 1951, 77 A. 2d 319).

Where salesman employed by broker was entitled to one-half of the commissions on all sales either made or procured by him, a fiduciary relationship existed with the necessary incidents of good faith and mutual trust, and right of salesman to commission must be determined on such basis rather than the basis of rival or competing brokers. *Henderson* v. *Porter* (D. C. Mun. App. 1947, 52 A. 2d 779).

Where salesman was employed on commission basis by broker, salesman would be entitled to commission where he initiated the negotiations and consented that broker might conduct them because of his greater experience and broker agreed that salesman would receive his share of commission in event sale should be made. *Id.*

That subsection (n) of this section authorized the suspension or revocation of broker's license for offering property for sale without written consent from owner did not prevent broker from recovery of commissions in such a case where owners had entered into a contract for sale of the property with purchaser produced by broker. *Murphy* v. *Mallos* (D. C. Mun. App. 1948, 59 A. 2d 514).

In a broker's suit against the purchaser who took subject to the present lease, such a lease did not obligate the purchaser to pay the rental commission which the former owners had agreed to pay where the purchaser never assumed any obligation to pay the broker. An agreement merely to take land subject to a specified encumbrance is not an agreement to assume and pay the encumbrance and there must be words importing that he will pay the debt to make him personally liable. *Schwartz* v. *Brown* (D.C. Mun. App. 1948, 64 A. 2d 298).

Consent of owner

A broker's failure to secure written consent of owner before offering realty for sale constitutes ground for suspension or revocation of license, but a broker who offers property without written consent of owner and secures a qualified buyer does not lose his right to commission, and hence broker's failure to obtain a written listing from attorney acting for owner did not per se invalidate broker's claim for commission. *P. T. Apostolides, etc.* v. *G. Colecchia, et al.* (D.C. App. 1966, 221 A 2d 437).

Statute providing that license of broker shall be subject to revocation or suspension if he offers property for sale or rent without written consent of owner does not nullify oral brokerage contracts, but it constrains court to interpret such oral contracts strictly against broker. *A. A. Riskin* v. *Baltimore & Ohio Railroad Company, a corporation, et al.* (D.C.D.C. 1964, 234 F. Supp. 979).

Where owner of dry cleaning and tailoring business orally agreed to sale of the business to purchaser procured by real estate brokers and to commission for brokers, owner was estopped from denying his obligation on ground that brokers did not first obtain a written listing from owner to sell the business. *Shaffer* v. *Berger* (D. C. Mun. App. 1951, 81 A. 2d 469).

Real estate brokers were not precluded from recovering commission for obtaining a purchaser for dry cleaning and tailoring business because brokers did not first obtain a written listing from owner of business. *Id.*

In action brought by real estate broker for damages resulting from alleged breach by defendant of agreement whereunder defendant allegedly promised to pay to broker and defendant's son an amount equal to retail price of realty over specified amount, if broker and defendant's son would assist defendant in obtaining title to realty for specified price, this section prohibiting real estate broker from offering property for sale without written authorization from owner was not applicable and afforded no defense. *Kyle* v. *Wiley* (D. C. Mun. App. 1951, 78 A. 2d 769).

Under this section, no broker may offer property for sale or rent without the written consent of the owner or his authorized agent. *Coldicott* v. *W. C. & A. N. Miller Development Co.* (D. C. Mun. App. 1946, 47 A. 2d 518).

Constitutional rights

Where real estate agent was not prevented from remitting money due to her principal and asserting her claim against principal in separate complaint but chose instead unsuccessfully to attempt to set off her claim against principal, she was not denied constitutional right of free access to courts. *S. V. Watwood* v. *Real Estate Commission etc.* (D.C. App. 1964, 196 A. 2d 635).

Discrimination

Finding of fair housing violation by broker, in offering house for sale to Negro at price higher than that for which it was offered to white person, justified license suspension. *J. Filippo* v. *Real Estate Com. of the District of Columbia* (D.C. App. 1966, 223 A. 2d 268).

Duty of broker

A broker owes his principal the highest fidelity and is bound to inform him fully of every development affecting his interest and particularly not to take any step secret or otherwise from which he may reap a personal profit at the expense of the principal. *Jay* v. *General Realties Co.* (D. C. Mun. App. 1946, 49 A. 2d 752).

Generally speaking, a broker who has secured his employment by a false representation, or who has by false representation induced his principal to accept an offer, is not entitled to a commission. The law requires the utmost good faith on the part of a broker in his dealings with his principal. *Ellis* v. *Morgan* (D. C. Mun. App. 1949, 65 A. 2d 797).

Where broker received deposit from plaintiff as down payment, he was not only an agent but also a trustee of the funds deposited and as such he was subject to the duty to act solely for the benefit of his principal. One may not be an agent of both parties to a transaction without making full disclosure to both and obtaining their consent. *Keith* v. *Berry* (D. C. Mun. App. 1949, 64 A. 2d 300).

Listing card

The listing card usually constitutes agreement between property owner and broker, and unless it is superseded by some later writing, or otherwise modified by the parties, it evidences the understanding between them. *Coldicott* v. *W. C. & A. N. Miller Development Co.* (D. C. Mun. App. 1946, 47 A. 2d 518).

Misrepresentation

Record on review by Municipal Court of Appeals sustained decision of Real Estate Commission suspending petitioner's license as a real estate broker on the grounds

that she had made a substantial misrepresentation and had demonstrated such unworthiness to act as broker as to endanger interests of the public. *D. B. Quander* v. *The Real Estate Commissioners of the District of Columbia* (D.C. Mun. App. 1962, 179 A. 2d 386).

In reviewing ruling of Real Estate Commission suspending broker's license, Municipal Court of Appeals was bound to credit testimony adverse to license holder. *Id.*

Penalty of suspension or revocation of license, to be imposed upon a broker guilty of conduct in violation of statute, was a matter wholly within discretionary power of real estate commission. *P. R. Kelley* v. *Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 415).

In proceeding to review decision of Real Estate Commission suspending petitioners' licenses for period of ten days, record supported Commission's findings that petitioners had made substantial misrepresentation in advertising property in area zoned against multiple-family dwellings as having apartment, and that petitioner had demonstrated such unworthiness to act as licensed real estate brokers as to endanger interests of public. *Ehrlich et ano.* v. *Real Estate Commission* (D. C. Mun. App. 1956, 118 A. 2d 801).

Where seller informed broker that if she sold she would have to have another place and signed deed when broker said he had another available apartment, which in fact was unavailable, broker is liable for his misrepresentation. *Murphy* v. *O'Donnell* (D. C. Mun. App. 1949, 63 A. 2d 340).

Notice of hearing

Although the record did not affirmatively show that notice of rescheduled hearing for suspension of real estate broker's license was given to all the members of the commission, in the absence of any showing to the contrary, notice would be presumed. *Kaiser* v. *Real Estate Commission of D.C.* (D.C. Mun. App. 1959, 155 A. 2d 715).

Punishment

When charges brought by real estate commission against broker relate directly to activity as a broker, and there is evidence to support charges, punishment may follow under statute authorizing commission to suspend or revoke license of broker who has demonstrated such unworthiness or incompetency to act as real estate broker as to endanger interests of public. *Greene* v. *Real Estate Commission* (D.C. App. 1966, 218 A. 2d 508).

Question of fact

Where broker contended that he secured suitable accommodations and seller arbitrarily refused them, a question of fact was presented. *Murphy* v. *O'Donnell* D. C. Mun. App. 1949, 63 A. 2d 340).

Quorum

Proceedings for suspension of real estate broker's license were not invalid on ground that only two members of the three member commission were present when hearing was conducted and the order of suspension rendered, where statute was silent as to how many members were necessary to constitute a quorum and original order containing the charges and time and place of hearing was signed by all the members. *Kaiser* v. *Real Estate Commission of D.C.* (D.C. Mun. App. 1959, 155 A. 2d 715).

Recovery of commission

To be entitled to recover commission, broker must produce a purchaser who is ready, able and willing to buy on the terms authorized by the principal. Purchaser's signature on contract is some evidence of willingness to proceed but not that he is financially able or ready to do so. *Long* v. *Murchison* (D. C. Mun. App. 1948, 62 A. 2d 370).

Recovery of secret profit

In action to recover secret profit allegedly made by broker in purchasing plaintiff's property on broker's own account and reselling it at a profit, evidence required denial of recovery on ground that there was no evidence establishing relationship of real estate broker and client between the parties. *Urciolo* v. *O'Connor* (149 F. 2d 386, 80 U.S. App. D.C. 112).

In principal's action against broker for secret profit realized by broker in purchasing property herself through straw men without informing principal and later reselling it at a profit, evidence sustained findings that broker had purchased the property herself through straw men without informing principal. *Jay* v. *General Realties Co.* (D. C. Mun. App. 1946, 49 A. 2d 752).

Review

An order suspending the license of a real estate broker was not invalid on the ground that Commission failed to determine whether petitioner was acting as a "real estate broker", where petitioner and his counsel were clearly advised at hearing that claimed violations occurred while he was acting as a real estate broker, and where his counsel admitted that petitioner committed the acts in question while he was acting as such broker, and Commission in its findings, conclusion of law and decision made a determination that petitioner was acting as such broker when he performed the acts that it found constituted a violation of the statute. *Kaiser* v. *Real Estate Commission of D.C.* (D.C. Mun. App. 1959, 155 A. 2d 715).

Statute of limitations

Statutes of limitation are not applicable to proceeding by Real Estate Commission of District of Columbia suspending real estate broker's license. *Posner* v. *Martin, Adams, and Jones, as members of Real Estate Commission, etc.* (D. C. Mun. App. 1957, 135 A. 2d 156).

Sufficiency of evidence

Evidence of culpable fault on part of broker for unlawful acts of unlicensed employee aso salesman, violation of statute forbidding broker's use of unlicensed salesman and failure to obtain purchasers' consent to contract change was sufficient to sustain real estate commission's finding that broker was incompetent, justifying suspension of his license. *Greene* v. *Real Estate Commission* (D.C. App. 1966, 218 A. 2d 508).

Evidence sustained findings of the Real Estate Commission, which suspended broker's license for 120 days, that broker violated the code by failure, within a reasonable time, to account, by demonstrating unworthiness or incompetency to act as a real estate broker, and by fraudulent or dishonest dealing. *R. A. Brawner* v. *The Real Estate Commission of the District of Columbia* (D.C. App. 1963, 190 A. 2d 818).

Evidence supported finding that broker, who allegedly agreed to manage apartment buildings for 5 per cent of gross rentals but charged substantial amounts over and above 5 per cent without knowledge or consent of clients, violated statutory provisions proscribing making of substantial misrepresentation or demonstration of unworthiness or incompetency to act as real estate broker but did not violate other provisions proscribing failure within reasonable time to account for or remit property of others or fraudulent or dishonest dealing. *G. F. Worthington III* v. *Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1962, 184 A. 2d 639).

Evidence sustained finding of real estate commission, which revoked broker's real estate license, that broker in violation of statute made a substantial misrepresentation, and engaged in conduct which constituted fraudulent and dishonest dealing. *P. R. Kelley* v. *Real Estate Commission of the District of Columbia* (D.C. Mun. App. 1961, 172 A. 2d 415).

Evidence that real estate broker secured notary public to notarize signature of one of the owners of realty to contract for sale of the realty and recorded the contract with knowledge that signatory had not been before notary and that title was not in the name of the signatory alone, but in her name and that of her son, sustained finding of Real Estate Commission that broker's license as a real estate and business chance broker should be suspended for 60 days. *Brown* v. *Winston* (1952, 197 F. 2d 601, 91 U. S. App. D. C. 58).

Evidence was sufficient to sustain revocation of real estate broker's license for 90 days for substantial misrepresentation, for failing within a reasonable time to account for or to remit money, valuable documents, or other property coming into his possession which belonged to others, and for fraudulent and dishonest dealing. *Eiland* v. *Ahearn et al., etc.* (D. C. Mun. App. 1959, 153 A. 2d 312).

Trust funds

Broker was not guilty of failing to account and conversion, or of incompetency or unworthiness, justifying

license suspension, for failure to turn over subtenant's rent money to purchaser, where broker had correctly turned money over to tenant who was entitled thereto. *S. Blackwell* v. *Real Estate Commission etc.* (D.C. App. 1965, 210 A. 2d 544).

Broker's mere error of judgment with respect to person to whom rent money should be turned over, largely due to lack of proper notice of changes in status of parties, would not merit license suspension. *Id.*

Real estate agent who on behalf of property owner receives money from tenants is trustee of such funds and cannot set off personal debt owed him by owner against payments due under trust; equity treats fiduciary as holding res in separate capacity. *S. V. Watwood* v. *Real Estate Commission etc.* (D.C. App. 1964, 196 A. 2d 635).

Where real estate agent by attempting to set off from rent money which he owed to property owner a debt owed him by owner violated statute requiring accounting and remittance of money or other property within reasonable time, agent's good faith was not defense but only fact to be considered in mitigation of punishment. *Id.*

§ 45–1409. Hearing before suspension—Court review—Appeal.

The Commission shall, before denying an application for license, or before suspending or revoking any license, set the matter down for a public hearing, and at least ten days prior to the date set for the hearing it shall notify the applicant or licensee in writing of any charges made and shall afford said applicant or licensee an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally to the applicant or licensee or by mailing same by registered mail or by certified mail to the last-known business address of such applicant or licensee. If said applicant or licensee be a salesman the Commission shall also notify the broker employing him, or whose employ he is about to enter, by mailing notice by registered mail or by certified mail to the broker's last-known address. The hearing on such charges shall be at such time and place as the Commission shall prescribe. The Commission shall have the power to issue subpenas or take testimony of any person by deposition in the same manner as prescribed by law in judicial procedure in the United States District Court for the District of Columbia in civil cases. It shall also have the power to require the production of books, records, papers, and documents by subpena or otherwise. Any party to any hearing before the Commission shall have the right to the attendance of witnesses in his behalf at such hearing upon making request therefor to the Commission and designating the person or persons sought to be subpenaed. If the Commission shall determine that any applicant is not qualified to receive a license, a license shall not be granted to said applicant, and if the Commission shall determine that any licensee is guilty of a violation of any of the provisions of §§ 45–1401 to 45–1418 this chapter, his or its licenses shall be suspended or revoked.

A final decision or determination of the Commission denying, suspending, or revoking a license may be reviewed in the District of Columbia Court of Appeals in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code.

Any party to the proceedings desiring it shall be furnished with a copy of such stenographic notes, upon the payment to the Commission of such reasonable fee as it shall, by general rule or regulation, prescribe. (Aug. 25, 1937, 50 Stat. 794, ch. 760, § 9; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; June 11, 1960, 74 Stat. 203, Pub. L. 86–507 § 1(50); Dec. 23, 1963, 77 Stat. 617, Pub. L. 88–241, § 9.)

AMENDMENTS

1963—Sec. 9 of act Dec. 23, 1963, amended the section by striking out the 9th and 10th sentences in the first paragraph and the entire second paragraph and inserted in lieu thereof a new paragraph.

1960—Act June 11, 1960, inserted words "or by certified mail" following "registered mail" in two instances.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 23, 1963, was made effective on Jan. 1, 1964. See note preceeding ch. 1, Title 11.

CROSS REFERENCES

Certified mail receipts as prima-facie evidence of delivery, see § 14–506.

Exclusive jurisdiction of the District of Columbia Court of Appeals to review final decision of Real Estate Commission, see § 11–742.

NOTES TO DECISIONS

Abuse of discretion

Where petitioner for rehearing of determination which suspended his real estate broker's license for a period of 120 days, had an opportunity to present his testimony at hearing, and had offered facts in mitigation, Real Estate Commission of District of Columbia did not abuse its discretion in refusing to grant rehearing especially in view of fact that Commission had before it counter-affidavits which sharply contradicted the material allegation of petitioner's affidavit for rehearing. *Posner* v. *Martin, Adams, and Jones, as members of Real Estate Commission, etc.* (D. C. Mun. App. 1957, 135 A. 2d 156).

Hearing, when required

Proceeding to revoke license issued by Real Estate Commission of District of Columbia for conviction of licensee of forgery, embezzlement, obtaining money under false pretenses, or like offense does not necessarily require hearing and if Commission receives certified copy of court record showing such conviction no further proof is required and Commission must revoke license. *O. T. Whiting, Jr.* v. *Real Estate Commission of the District of Columbia* (D.C. App. 1964, 198 A. 2d 742).

If Real Estate Commission of District of Columbia receives certified copy of court record showing conviction of licensee of forgery, embezzlement, obtaining money under false pretenses or like offense evidence cannot be received controverting record and there is no room for argument. *Id.*

License of real estate broker convicted of engaging in business of wagering without registering or paying occupational tax should not have been revoked by Real Estate Commission without hearing to determine whether offense was "like offense" under statute requiring revocation upon conviction for forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense. *Id.*

Offense of engaging in business of wagering without registering or paying occupational tax was not ground for revoking license under statute requiring revocation of license by Real Estate Commission of District of Columbia when licensee is convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense. *Id.*

Matters considered on rehearing

Although, once a motion for rehearing is granted by administrative agency, and a rehearing is had, the agency must base its findings on matters introduced in evidence,

such rule does not apply where agency is merely considering whether it should exercise its discretion and grant motion for rehearing, and therefore Real Estate Commission of District of Columbia on petitioner's petition for rehearing of suspension of his real estate broker's license, could consider, in addition to petitioner's affidavit for rehearing, counter-affidavits. *Posner* v. *Martin, Adams, and Jones, as members of Real Estate Commission, etc.* (D. C. Mun. App. 1957, 135 A. 2d 156).

Recovery of commissions

A broker procuring a purchaser for real property who entered into a binding contract with the vendor earned his commission and was entitled to receive it from the vendor when the transaction was abandoned by the parties when the vendor resold the property to others. *S. Blanken* v. *Bechtel Properties, Inc.* (D.C.D.C. 1961, 194 F. Supp. 638; affirmed 299 F. 2d 928).

§ 45–1410. Provisions applicable to nonresident brokers and salesmen.

A nonresident of the District of Columbia may become a real-estate broker or a real-estate salesman in the District of Columbia by conforming to all of the conditions of this chapter, except that the application of such person for a license need not be accompanied by the recommendation of real-estate owners in the District of Columbia prescribed in paragraph 2 of section 45–1405, but in lieu thereof the Commission shall require the filing of like recommendations by similarly qualified real-estate owners of property in the state, territory, or county of such applicant's residence, and with the further exception that a nonresident of the District of Columbia need not maintain a place of business within the District of Columbia if he is licensed in and maintains a place of business in the state in which he resides.

(2) The Commission may recognize, in lieu of the recommendation and statements otherwise required by this chapter to accompany an application for a license, the valid and existing license issued to a nonresident to act as a real-estate broker or salesman by any state having a law for the licensing of such brokers and salesmen similar to this chapter, upon payment of the license fee prescribed by this chapter and the filing by the applicant with the commission of a duly authenticated copy of applicant's license issued by such state: *Provided, however,* That every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper courts of the District of Columbia by the service of any process or pleadings authorized by the laws of the United States applying to the District of Columbia on the secretary of the Commission, said consent stipulating and agreeing that such service of such process or pleadings on said secretary shall be taken and held in all courts to be as valid and binding as if due or personal service had been made upon said applicant in the District of Columbia. Said instrument containing such consent shall be duly acknowledged and if made by a corporation shall be authenticated by the seal thereof. All such applications, except from individuals, shall be accompanied by a duly certified copy of the resolution of the proper officers or managing board, authorizing the proper officer to execute the same. In case any process or pleadings mentioned in this chapter are served upon the secretary of the Commission, it shall be by duplicate copies, one of which shall be filed in the office of the Commission and the other immediately forwarded by registered mail or by certified mail to the residence address given by the applicant against which said process or pleadings are directed: *And provided further,* That every nonresident of the District of Columbia shall file a bond in form and contents the same as is required of applicants under section 45–1405. (Aug. 25, 1937, 50 Stat. 795, ch. 760, §10; Aug. 10, 1939, 53 Stat. 1357, ch. 664, § 9; June 11, 1960, 74 Stat. 203, Pub. L. 86–507, § 1 (51).)

AMENDMENTS

1960—Act June 11, 1960, inserted words "or by certified mail" following "registered mail" in last sentence.

1939—Act Aug. 10, 1939, inserted "and with the further exception that a nonresident of the District of Columbia need not maintain a place of business within the District of Columbia if he is licensed in and maintains a place of business in the state in which he resides."

CROSS REFERENCE

Certified mail receipts as prima-facie evidence of delivery, see § 14–506.

§ 45–1411. Power to obtain evidence.

Each member of the Commission and its duly authorized representatives may administer oaths to witnesses.

In case of the refusal of any person to comply with any subpena issued hereunder or to testify to any matter regarding which he may lawfully be interrogated, the United States District Court for the District of Columbia, or any judge thereof, on application of any member of the Commission, shall issue an order requiring such person to comply with such subpena and to testify or either, and any failure to obey such order of the court may be punished by the court as a contempt thereof. (Aug. 25, 1937, 50 Stat. 796, ch. 760, § 11; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107; ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 45–1412. Further exemptions—Exceptions.

It shall not be necessary for any trustee or auctioneer acting under authority of a power of sale in a mortgage, deed of trust, or similar instrument securing the payment of a bona fide debt nor any bank, trust company, building and loan association, insurance company, or any land-mortgage or farm-loan association, organized under the laws of the United States, when engaged in the transaction of business within the scope of its corporate powers and provided by law, to obtain a license under this chapter.

The exemption contained in this section shall not apply to any bank, trust company, building and loan association, insurance company, or any land-mortgage or farm-loan association, which for another and for a compensation, performs any of the acts defined herein as the acts of a real-estate broker or business-chance broker in connection with any property, wherein such bank, trust company, building and loan association, insurance company, land-mortgage or farm-loan association has no fiduciary interest such as receiver, referee, adminis-

trator, executor, guardian, or trustee. (Aug. 25, 1937, 50 Stat. 796, ch. 760, § 12; Aug. 10, 1939, 53 Stat. 1357, ch. 664, § 10.)

AMENDMENT

1939—Act Aug. 10, 1939, added the second paragraph relating to the application of the exemption.

CROSS REFERENCE

Other exemptions, see § 45–1402.

§ 45–1413. List of licensees to be published.

The Commission shall publish at least annually a list of the names and addresses of all licensees licensed by it under the provisions of this chapter and of all persons whose license has been suspended or revoked within one year, together with a succinct report of its work during the year. Such list shall be mailed by the Commission to any person in the District of Columbia upon request. (Aug. 25, 1937, 50 Stat. 796, ch. 760, § 13.)

§ 45–1414. Fraudulent transfers or loans.

It shall be unlawful for any person, firm, association, partnership, or corporation to enter into or become a party to any contract, agreement, or understanding, or in any manner whatsoever to consider, combine, conspire, or act with another or others, (a) to execute a deed conveying real property in the District of Columbia that is not a bona-fide sale but is instead a simulated sale of such property executed for the purpose and with the intent of misleading others as to the value of such property, and which in fact does so mislead and/or defraud others, to their detriment; or (b) to execute a mortgage or deed of trust upon real property situated in the District of Columbia that does not in fact represent security for a bona-fide indebtedness, but which is in reality a simulated transaction, executed for the purpose and with the intent of misleading or deceiving others as to the value of the property and which does mislead, deceive, or defraud others to their detriment.

It shall be unlawful within the District of Columbia for any person, firm, partnership, association, or corporation, foreign or domestic, either as owner or otherwise, to offer, give, award, or promise, or to use any method, scheme or plan offering, giving, awarding, or promising free lots in connection with the sale or the offering for sale or an attempt to sell or negotiate the sale of any real estate or interest therein, wherever situated, for the purpose of attracting, inducing, persuading, or influencing a purchaser or a prospective purchaser; or to offer, promise, or give prizes of any name or nature for attendance at or participation in any sale of real estate, by auction or otherwise.

It shall be unlawful for any person, firm, partnership, association, or corporation knowingly to pay a fee, commission, or compensation to anyone for the performance within the District of Columbia of any service or act defined in this chapter as the act of a real-estate broker, real-estate salesman, business-chance broker, or business-chance salesman, who was not duly licensed as such at the time such service or act was performed: *Provided,* That this paragraph shall not apply to the division of commission by a broker licensed hereunder with a nonresident cooperating broker. (Aug. 25, 1937, 50 Stat. 796, ch. 760, § 14; Aug. 10, 1939, 53 Stat. 1357, ch. 664, § 11.)

AMENDMENT

1939—Act Aug. 10, 1939, added the second and third paragraphs.

NOTES TO DECISIONS

Action for compensation

This section, prohibiting broker or salesman from maintaining action for compensation as such without alleging and proving that he was duly licensed when alleged cause of action arose did not bar one who was licensed as real estate salesman in broker's office at time of performing services in procuring purchaser of realty from recovering half of commission under agreement with broker, though such salesman was not licensed when sale contract was executed after salesman's resignation. *Riddell* v. *Howar* (D. C. Mun. App. 1952, 90 A. 2d 925).

This section prohibiting broker or salesman from maintaining action for compensation as such without alleging and proving that he was duly licensed when alleged cause of action arose does not mean that one earning commission for services in procuring purchaser of realty while duly licensed as real estate salesman cannot recover commission because of his voluntary surrender of license on resigning as salesman in broker's office before execution of sale contract. *Id.*

Remedy of nonresident co-operating broker

Under this section, only a District of Columbia broker is authorized to share a commission with a nonresident co-operating broker, and hence nonresident real estate broker could not recover from one who was not a licensed broker, but only a salesman a percentage of commission received from a sale of property in the District. *Metzler* v. *Edwards* (D. C. Mun. App. 1947, 53 A. 2d 42).

Provision of this section permitting a broker duly licensed in the District of Columbia to share commission on the sale of real estate with a nonresident co-operating broker establishes that agreements to that effect are not in contravention of public policy and gives, not only a right to a co-operating nonresident broker, but an enforceable remedy as well, and such agreements are enforceable in local courts, notwithstanding prohibition under section 1407 of this title against the maintenance of suits in local courts by an unlicensed broker to recover a commission. *Id.*

§ 45–1415. License revoked on conviction of crime.

Where during the term of any license issued by the Commission the licensee shall be convicted in a court of competent jurisdiction in the District of Columbia or any State (including Federal courts) of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense or offenses and a duly certified or exemplified copy of the record in such proceedings shall be filed with the Commission, the Commission shall revoke forthwith the license by it theretofore issued to the licensee so convicted.

In the event that any licensee shall be indicted in the District of Columbia or any State or Territory (including Federal courts) for forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or like offense or offenses, and a certified copy of the indictment be filed with the Commission, or other proper evidence thereof be to it given, the Commission shall have authority, in its discretion, to suspend the license issued to such licensee pending trial upon such indictment.

No license shall be issued by the Commission to any person known by it to have been, within five years theretofore, convicted of forgery, embezzlement, obtaining money under false pretenses, extor-

tion, criminal conspiracy to defraud, or other like offense or offenses, or to any copartnership of which such person is a member, or to any association or corporation of which said person is an officer, director, or employee, or in which as a stockholder such person has or exercises a controlling interest either directly or indirectly. In the event of the revocation or suspension of the license issued to any member of a copartnership, or to any officer of an association or corporation, the license issued to such copartnership, association, or corporation, shall be revoked by the Commission, unless, within a time fixed by the Commission, where a copartnership, the connection therewith of the member whose license has been revoked shall be severed and his interest in the copartnership and his share in its activities brought to an end, or where an association or corporation, the offending officer shall be discharged and shall have no further participation in its activity. (Aug. 25, 1937, 50 Stat. 796, ch. 760, § 15.)

CROSS REFERENCE

Revocation or suspension of license generally, see § 45–1408.

NOTES TO DECISIONS

Hearing, when required

Proceeding to revoke license issued by Real Estate Commission of District of Columbia for conviction of licensee of forgery, embezzlement, obtaining money under false pretenses, or like offense does not necessarily require hearing and if Commission receives certified copy of court record showing such conviction no further proof is required and Commission must revoke license. *O. T. Whiting, Jr.* v. *Real Estate Commission of the District of Columbia* (D.C. App. 1964, 198 A. 2d 742).

If Real Estate Commission of District of Columbia receives certified copy of court record showing conviction of licensee of forgery, embezzlement, obtaining money under false pretenses or like offense evidence cannot be received controverting record and there is no room for argument. *Id.*

License of real estate broker convicted of engaging in business of wagering without registering or paying occupational tax should not have been revoked by Real Estate Commission without hearing to determine whether offense was "like offense" under statute requiring revocation upon conviction for forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense. *Id.*

Offense of engaging in business of wagering without registering or paying occupational tax was not ground for revoking license under statute requiring revocation of license by Real Estate Commission of District of Columbia when licensee is convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense. *Id.*

§ 45–1416. Penalties—Prosecutions.

Any person or corporation violating any provision of this chapter shall upon conviction thereof, if a person, be punished by a fine of not more than $500, or by imprisonment for a term not to exceed six months, or by both such fine and imprisonment, in the discretion of the court; and, if a corporation, be punished by a fine of not more than $1,000. Any officer, director, employee, or agent of a corporation, or member, employee, or agent of a firm, partnership, copartnership, or association, who shall personally participate in or be accessory to any violation of this chapter by such firm, partnership, copartnership, association, or corporation, shall be subject to the penalties herein prescribed for individuals

This chapter shall not be construed to release any person, partnership, association, or corporation from civil liability or criminal prosecution under the laws applying to the District of Columbia.

All prosecutions for violation of this chapter shall be begun in the District of Columbia Court of General Sessions in the name of the District of Columbia and under the direction and charge of the corporation counsel of the District of Columbia. The corporation counsel of the District of Columbia and his assistants shall also be counsel for the Commission in all suits to which it may be a party, and shall advise the Commission and at its request attend any and all hearings which it may hold in the performance of its duties hereunder. (Aug. 25, 1937, 50 Stat. 797, ch. 760, § 16; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

NOTES TO DECISIONS

Instructions

In prosecution for acting as real estate broker without a license, instruction which conditioned defendant's acquittal on findings that defendant was attempting to negotiate the purchase of the real estate for himself only or that two persons named in the contracts as purchasers were only straw parties acting on behalf of the defendant only was proper. *Draisner* v. *District of Columbia* (D. C. Mun. App. 1957, 131 A. 2d 297).

Sufficiency of evidence

Evidence was sufficient to sustain conviction for acting as real estate broker without a license. *Draisner* v. *District of Columbia* (D. C. Mun. App. 1957, 131 A. 2d 297).

§ 45–1417. Bond required for renewal of licenses.

No license heretofore issued under the authority of this chapter, where the application therefor was accompanied by a bond which does not conform with the requirements of said chapter as amended hereby, shall be reissued or renewed unless the application for such reissuance or renewal shall be accompanied by a bond in accordance with this chapter as amended by this Act. (Aug. 10, 1939, 53 Stat. 1358, ch. 664, § 12.)

REFERENCES IN TEXT

The words "This Act" refer to the act of August 10, 1939, cited to the text of the various sections of this chapter which it amends.

§ 45–1418. Separability of provisions.

If any section, subsection, sentence, clause, phrase, or requirement of this chapter is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions thereof. The Congress of the United States hereby declares that it would have passed this chapter, and each section, subsection, sentence, clause, phrase, and requirement thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or requirements be declared unconstitutional or invalid. (Aug. 25, 1937, 50 Stat. 798, ch. 760, § 17.)

Chapter 15.—OWNERSHIP BY ALIENS

Sec.
45–1501. Ownership of real estate by aliens.
45–1502. Real estate—Ownership by alien individuals or corporation.
45–1503. Corporations controlled by aliens.
45–1504. Forfeiture.
45–1505. Ownership by foreign governments or representatives.

§ 45–1501. Ownership of real estate by aliens.

The act entitled "An Act to better define and regulate the rights of aliens to hold and own real estate in the Territories," approved March 2, 1897, be, and the same is hereby, amended so as to extend to aliens the same rights and privileges concerning the acquisition, holding, owning, and disposition of real estate in the District of Columbia as by that act are conferred upon them in respect of real estate in the Territories of the United States. All laws and parts of laws so far as they conflict with the provisions of this section are hereby repealed. (Feb. 23, 1905, 33 Stat. 733, ch. 733.)

REFERENCES IN TEXT

The act approved March 2, 1897, referred to in the text, is classified to 48 U.S.C. §§ 1501 to 1507.

CODIFICATION

Section is also set out as 48 U.S.C. § 1508.

CROSS REFERENCE

Title by descent, see § 19–321.

§ 45–1502. Real estate—Ownership by alien individuals or corporation.

It shall be unlawful for any person not a citizen of the United States or who has not lawfully declared his intention to become such citizen, or for any corporation not created by or under the laws of the United States or of some State or Territory of the United States, to hereafter acquire and own real estate, or any interest therein, in the District of Columbia, except such as may be acquired by inheritance: *Provided,* That the prohibition of this section shall not apply to cases in which the right to hold and dispose of lands in the United States is secured by existing treaties to the citizens or subjects of foreign countries, which rights, so far as they exist by force of any such treaties, shall continue to exist so long as such treaties are in force, and no longer, and shall not apply to the ownership of foreign legations or the ownership of residences by representatives of foreign governments or attachés thereof. (Mar. 3, 1901, 31 Stat. 1252, ch. 854, § 396.)

NOTES TO DECISIONS

Setting aside judgment

A stipulation that tenant who was granted 60-day stay of execution would consent to judgment for landlords suing for possession of leased housing accommodations, would not be set aside for newly discovered evidence that landlords were aliens incapable of owning realty in District of Columbia, where one landlord had declared his intention of becoming a citizen, and the record intimated that the other landlord was an attaché of a foreign legation. *Conrad* v. *Medina* (D. C. Mun. App. 1946, 47 A. 2d 562).

Voidable title

Under this section, title of alien to land in District of Columbia is merely voidable and is not void until such time as the land is forfeited by due process of law. *Conrad* v. *Medina* (D. C. Mun. App. 1946, 47 A. 2d 562).

§ 45–1503. Corporations controlled by aliens.

No corporation or association of which over fifty per centum of the stock is or may be owned by any person or persons, corporation or corporations, association or associations not citizens of the United States shall hereafter acquire or own any real estate hereafter acquired in the District of Columbia. (Mar. 3, 1901, 31 Stat. 1252, ch. 854, § 397; June 30, 1902, 32 Stat. 530, ch. 1329.)

AMENDMENT

1902—Act June 30, 1902, struck out "more than twenty" and inserting in lieu thereof the words "over fifty."

§ 45–1504. Forfeiture.

All property acquired or held or owned in violation of the provisions of this chapter shall be forfeited to the United States, and it shall be the duty of the United States attorney for the District to enforce every such forfeiture by bill in equity or other proper process. And in every such suit or proceeding that may be commenced to enforce the provisions of this chapter it shall be the duty of the court to determine the very right of the matter, without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights either of the United States or of the other parties concerned. (Mar. 3, 1901, 31 Stat. 1252, ch. 854, § 398.)

§ 45–1505. Ownership by foreign governments or representatives.

An act entitled "An Act to restrict the ownership of real estate in the Territories to American citizens, and so forth," approved March 3, 1887, be so amended that the same shall not apply to or operate in the District of Columbia, so far as relates to the ownership of legations, or the ownership of residences by representatives of foreign governments, or attaches thereof. (Mar. 9, 1888, 25 Stat. 45, ch. 30.)

REFERENCES IN TEXT

Sections 1, 2 and 4 of act Mar. 3, 1887, referred to in the text, were incorporated in sections 396 to 398 of this Code as enacted by act Mar. 3, 1901, 31 Stat. 1252, ch. 854. Said sections 396 to 398 were omitted from this Code in 1929 as superseded by 48 U.S.C. § 1508, but were set out as sections 45–1502 to 45–1504 in the 1940 edition of this Code.

Chapter 16.—RENT CONTROL

Sec.
45–1601. Purposes—Time limit.
45–1602. Maximum rent ceilings and minimum service standards.
45–1603. General and special adjustments.
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§ 45–1601. Purposes—Time limit.

(a) It is hereby found that the national emergency and the national-defense program (1) have aggravated the congested situation with regard to housing accommodations existing at the seat of government; (2) have led or will lead to profiteering and other speculative and manipulative practices by some owners of housing accommodations; (3)

have rendered or will render ineffective the normal operations of a free market in housing accommodations; and (4) are making it increasingly difficult for persons whose duties or obligations require them to live or work in the District of Columbia to obtain such accommodations. Whereupon it is the purpose of this chapter and the policy of the Congress during the existing emergency to prevent undue rent increases and any other practices relating to housing accommodations in the District of Columbia which may tend to increase the cost of living or otherwise impede the national-defense program.

(b) The provisions of this chapter, and all regulations, orders, and requirements thereunder, shall terminate on July 31, 1953; except that as to offenses committed, or rights or liabilities incurred, prior to such expiration date, the provisions of this chapter and such regulations, orders, and requirements, shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense. (Dec. 2, 1941, 55 Stat. 788, ch. 553, § 1; Dec. 3, 1945, 59 Stat. 592, ch. 514; June 29, 1946, 60 Stat. 340, ch. 521; Aug. 1, 1947, 61 Stat. 713, ch. 429; Mar. 30, 1948, 62 Stat. 100, ch. 163; Apr. 29, 1948, 62 Stat. 205, ch. 243, § 1; Mar. 31, 1949, 63 Stat. 30, ch. 45; Apr. 19, 1949, 63 Stat. 48, ch. 73, § 1; June 30, 1950, 64 Stat. 310, ch. 428, § 1; Mar. 23, 1951, 65 Stat. 25, ch. 16; June 30, 1951, 65 Stat. 98, ch. 192, § 1; June 30, 1952, 66 Stat. 308, ch. 531, § 1; Apr. 30, 1953, 67 Stat. 26, ch. 32, § 1.)

AMENDMENTS

1953—Subsec. (b) amended by act Apr. 30, 1953, which substituted "July 31, 1953" for "April 30, 1953."

1952—Subsec. (b) amended by act June 30, 1952, which substituted "April 30, 1953" for "June 30, 1952."

1951—Subsec. (b) amended by act June 30, 1951, which substituted "June 30, 1952" for "June 30, 1951."

Subsec. (b) amended by act Mar. 23, 1951, which substituted "June 30, 1951" for "March 31, 1951."

1950—Subsec. (b) amended by act June 30, 1950, which substituted "January 31, 1951, unless the Congress shall by joint resolution insert a later date" for "June 30, 1950".

1949—Subsec. (b) amended by act Mar. 31, 1949, which substituted "April 30, 1949" for "March 31, 1949", and by act of April 19, 1949, which substituted "June 30, 1950" for "April 30, 1949".

1948—Subsec. (b) amended by the act of April 29, 1948, which substituted "March 31, 1949" for "April 30, 1948".

Subsec. (b) amended by act Mar. 30, 1948, which substituted "April 30, 1948" for "March 31, 1948".

1947—Subsec. (b) amended by act Aug. 1, 1947, which substituted "March 31, 1948" for "December 31, 1947".

1946—Subsec. (b) amended by act June 29, 1946, which substituted "December 31, 1947" for "December 31, 1946".

1945—Subsec. (b) amended by act Dec. 3, 1945, which substituted "December 31, 1946" for "December 31, 1945".

EFFECTIVE DATE OF 1951 AMENDMENT

Section 2 of act of June 30, 1951, provided that: "This Act [this chapter] shall take effect on the day following the date of its enactment [June 30, 1951]."

SHORT TITLE

Section 14 of act Dec. 2, 1941, as amended by act June 30, 1951, § 1, provided that: "This Act [this chapter] may be cited as the 'District of Columbia Emergency Rent Act of 1951'."

SEPARABILITY PROVISIONS

Section 12 of act Dec. 2, 1941, as amended by act June 30, 1951, § 1, provided that: "If any provision of this Act [this chapter] or the application of such provision to any person or circumstance shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other persons or circumstances shall not be affected thereby."

APPROPRIATION

Section 13 of act Dec. 2, 1941, as amended by act June 30, 1951, § 1, provided that: "There is hereby authorized to be appropriated such funds as may be necessary to carry out the provisions of this Act [this chapter], to be paid out of money in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated."

RECONTROL OF ACCOMMODATIONS

Section 7 of act Apr. 19, 1949, provided that: "Nothing in this Act [amending §§ 45–1601, 45–1602, 45–1605 and 45–1610] shall be construed as authorizing or permitting the recontrol of any housing accommodations which have been heretofore decontrolled."

NOTES TO DECISIONS

Generally

This chapter is justified by public crisis in housing caused by great influx of wartime employees. *Heindrich* v. *Dimas-Aruti* (D. C. Mun. App. 1945, 42 A. 2d 138).

Actual use

Although a tenant may not at will commit his landlord to a use not intended by landlord, nevertheless if tenant, contrary to lease provision, uses premises for housing with knowledge of landlord who thereafter accepts rent, such actual use determines application of this chapter, and not intent expressed in lease. *Hohensee* v. *Manchester* (D. C. Mun. App. 1952, 90 A. 2d 830).

Constitutionality

The amendatory Rent Act did not in any way impair the rights and obligations of appellant's contract of purchase and therefore appellant was not deprived of any vested right. *Kahn* v. *Wall* (D. C. Mun. App. 1949, 68 A. 2d 862).

Argument that the sixty-five percent clause is discriminatory class legislation and therefore void is without foundation because Congress has the power to make reasonable classifications in order to effectuate the purposes of the act. *Id.*

Retroactive or retrospective laws are not forbidden by the Constitution merely because of such feature. Assuming that the amendatory Rent Act may be classed as retrospective legislation, it cannot be on that count alone declared unconstitutional. *Id.*

We do not think that the office of the Administrator of Rent Control is the proper place for an attack on the constitutionality of the Rent Act. *Block* v. *Tenants* (D. C. Mun. App. 1950, 70 A. 2d 59).

Construction

This chapter must be liberally construed to effect its obvious purpose and afford relief from conditions which would otherwise impede the war effort. *Moore* v. *Coates* (D.C. Mun. App. 1945, 40 A. 2d 68).

This chapter was enacted to prevent injustices which would be expected to flow from acutely overcrowded conditions of a wartime capital, and it should be reasonably construed so as to accomplish its purposes. *Gould* v. *Butler* (D.C. Mun. App. 1943, 32 A. 2d 867). See, also, *Mayer* v. *Buchanan* (D.C. Mun. App. 1947, 50 A. 2d 595).

The District Emergency Rent Act was designed as a model, pre-war, temporary, emergency measure to forestall the skyrocketing of rentals of housing accommodations for defense workers, then concentrating in the District of Columbia. The act is directed primarily at private landlords. *United States* v. *Wittek* (1949, 69 S. Ct. 1108, 337 U.S. 346, 93 L. Ed. 1406).

Rent Act must be considered as a whole and its sections must be read in connection with each other. *Dunning* v. *Randall Hagner Co.* (D. C. Mun. App. 1949, 63 A. 2d 770).

Construction with other laws

If § 15–201 regarding issuance of execution was in conflict with this chapter which was subsequently adopted, to the extent of the conflict said § 15–201 was required to give way to this chapter. *Myers* v. *H. L. Rust Co.* (1943, 134 F. 2d 417, 77 U.S. App. D.C. 218).

The provisions of this chapter supersede older code enactments wherever there is conflict between them. *Lingo* v. *Wolfe* (D. C. Mun. App. 1944, 37 A. 2d 270).

Expiration of law

Notwithstanding this chapter expired on July 1, 1953, the right to sue for a prior rent overcharge survived. *Jeziorski et al.* v. *Hollod* (D. C. Mun. App. 1954, 106 A. 2d 698).

Where only defense to suit for possession was that premises were protected by this chapter, after this chapter expired, defendant's appeal became moot, and would be dismissed, as remaining question of costs in trial court did not provide justiciable question. *Smith* v. *Worksman* (D. C. Mun. App. 1953, 99 A. 2d 712).

Findings of fact

Where rental agent learned that premises leased for office were being used at least in part for housing, but continued to accept rent, award of possession of whole premises to landlord presumably on basis that premises were commercial and were not subject to this chapter, was erroneous in absence of finding as to whether uses were severable and, if not, as to which was primary use. *Hohensee* v. *Manchester* (D. C. Mun. App. 1952, 90 A. 2d 830).

Primary use

Under this chapter, if rental unit is used for both housing and commercial purposes and is not subject to severability, either commercial or housing use must be given precedence, and which is controlling use is question of fact, and ultimate question is whether use as housing is primary or whether it is merely incidental to commercial use. *Hohensee* v. *Manchester* (D. C. Mun. App. 1952, 90 A. 2d 830).

Purpose

This chapter is designed to prevent increases in cost of living and other impediments to the national defense program, and the purpose of this chapter is to freeze landlord-tenant relationships existing at the time of the adoption of this chapter. *Myers* v. *H. L. Rust Co.* (1943, 134 F. 2d 417, 77 U.S. App. D.C. 218).

This chapter was not intended to restore possession to occupant, who had violated obligations, against owner of premises who in good faith sought to recover possession of property for immediate and personal use as a dwelling. *Leonardo* v. *Leonardo* (1945, 145 F. 2d 849, 79 U.S. App. D. C. 258).

A primary purpose of rent control legislation is to freeze existing tenancies and assure right of continuing possession to tenants of dwelling property. *Stoner* v. *Humphries* (D. C. Mun. App. 1952, 87 A. 2d 528).

Though this chapter was enacted primarily for benefit of tenants, it did not intend that rights given tenants should be used to frustrate rights reserved to landlord, and where rights of purchaser of leased property to be used for purchaser's residence were clearly established, tenant must yield regardless of hardships involved. *Arsenault* v. *Angle* (D. C. Mun. App. 1945, 43 A. 2d 709).

This chapter was passed primarily for protection of tenants, but did not intend to prevent free sale of dwelling property and did not intend that rights given tenant should be used to frustrate rights reserved to landlord. *National Metropolitan Bank of Washington* v. *Judge* (D. C. Mun. App. 1944, 37 A. 2d 446). See, also, *Hicks* v. *Bigelow* (D.C. Mun. App. 1948, 55 A. 2d 924).

It is practically inconceivable that Congress would have subjected its government-owned low-rent housing program in the District to the additional controls prescribed by the District of Columbia Emergency Rent Act. *United States* v. *Wittek* (1949, 69 S. Ct. 1108, 337 U.S. 346, 93 L. Ed. 1406).

The claim that the chapter is unconstitutional because the emergency ceased to exist is without merit, for it must be assumed that Congress, by its latest extension, found a continuing existence of the emergency justifying continued existence of the chapter. The court is not prepared by the process of judicial notice to override a judgment of Congress so recently exercised. *Kahn* v. *Wall* (D.C. Mun. App. 1949, 68 A. 2d 862).

§ 45–1602. Maximum rent ceilings and minimum service standards.

Subject to such adjustments as may be made pursuant to sections 45–1603 and 45–1604, maximum-rent ceilings and minimum-service standards for housing accommodations in the District of Columbia shall be the following:

(1) For housing accommodations rented on January 1, 1951, and not under control under this chapter prior to that date, the rent and service to which the landlord and tenant were entitled on that date.

(2) For housing accommodations not rented on January 1, 1951, but which had been rented within the year ending on that date, and not under control under this chapter during that year, the rent and service to which the landlord and tenant were last entitled within such year.

(3) For housing accommodations not rented on January 1, 1951, or within the year ending on that date, and not covered by subsection (4) hereof, the rent and service generally prevailing for comparable housing accommodations as determined by the Administrator.

(4) For housing accommodations under control under this chapter on December 31, 1950, the rent and service to which the landlord and tenant were entitled on June 30, 1951; except that upon the filing, by any landlord of any housing accommodations covered by this subsection, of a new rent schedule on a form prescribed by the Administrator and setting forth the pertinent circumstances as indicated by such form, the rent and service shall be adjusted and automatically effective upon the date of filing thereof, (A) for housing accommodations rented on January 1, 1941, or within the year ending on that date, so that the maximum-rent ceiling shall be increased to 20 per centum above the rent heretofore frozen at the level of January 1, 1941, or the last rent in the year 1940, whichever was applicable, plus the upward adjustments heretofore authorized by General Orders 12 and 13 of the Administrator; and (B) for housing accommodations not rented on January 1, 1941, or within the year ending on that date, so that the maximum-rent ceiling shall be increased by 2 per centum per year for each calendar year ending after rent schedules for such housing accommodations were first filed in the office of the Administrator, for the calendar years 1941 to 1950, inclusive, to the extent applicable, plus the upward adjustments heretofore authorized by General Orders 12 and 13 of the Administrator.

(Dec. 2, 1941, 55 Stat. 788, ch. 553, § 2; Apr. 29, 1948, 62 Stat. 205, ch. 243, § 2; Apr. 19, 1949, 63 Stat. 49, ch. 73, §§ 2, 3, 5; June 30, 1950, 64 Stat. 310, ch. 428, § 2; June 30, 1951, 65 Stat. 99, ch. 192, § 1.)

AMENDMENTS

1951—Act June 30, 1951, amended the section generally.

1950—Act June 30, 1950, added subsection (5).

1949—Act April 19, 1949, amended subsection (2)(e), added the words "except as hereinafter provided" to subsection (3)(b), and added subsection (4).

1948—Act April 29, 1948, added subsection (3).

EFFECTIVE DATE OF 1951 AMENDMENT

Amendment of section by act June 30, 1951, effective July 1, 1951, see § 2 of act June 30, 1951, set out as a note under § 45–1601.

RECONTROL OF ACCOMMODATIONS

See note under § 45–1601.

NOTES TO DECISIONS

Accommodations subject to control

The 1950 amendatory rent control act decontrolling nonhousekeeping housing accommodations rented as rooms and buildings used as rooming houses containing decontrolled housing accommodations, and 1951 act decontrolling furnished nonhousekeeping accommodations and buildings used as licensed rooming houses, decontrolled rooming houses including establishments classified as lodging houses for certain purposes, so that a leased building, known as hotel, but operating under lodging house license, containing nonhousekeeping furnished rooms, and accommodating both transient and permanent guests, was not subject to rent control after effective date of first of such acts. *Zeppos et al.* v. *Lewis* (D. C. Mun. App. 1954, 107 A. 2d 661).

Administrator's determination

Implicit in rental formula for units rented on January 1, 1941, but improved so as to constitute new housing accommodations, under this section providing that maximum rent ceiling for housing accommodations not rented on January 1, 1941, nor within the year ending on that date, shall be rent and service generally prevailing for comparable housing accommodations and determined by Administrator, is need for factual determination by Administrator, after application by landlord, as to rent and service generally prevailing for comparable housing accommodations. *Janifer* v. *Werner* (1952 196 F. 2d 244, 90 U. S. App. D. C. 406).

Filing by landlord of application with Rent Administrator for determination of rent ceilings is condition precedent to recognition of contractual interim ceilings entered into between landlord and tenant pending determination of rental ceilings by Administrator under Act providing that maximum rent ceilings for housing accommodations not rented on January 1, 1941, nor within the year ending on that date, shall be rent and service generally prevailing for comparable housing accommodations as determined by Administrator. *Id.*

Adjustment in rent ceiling granted by administrator had no retroactive effect and operated prospectively only. *Morning Star Lodge No. 40* v. *Harris* (D. C. Mun. App. 1953, 93 A. 2d 288).

Under this section requiring, for accommodations not rented during 1940, the rent and service generally prevailing for comparable accommodations "as determined by the Administrator," 1944 order of Administrator fixing rent ceiling for particular premises, and prescribing future minimum service standard therefor, was not retroactive, and hence no rent ceiling existed until determined by the Administrator, but until then rights of lessor and lessee were fixed by the lease. *Moore* v. *Coates* (D. C. Mun. App. 1945, 40 A. 2d 68).

Under this chapter, no maximum rent ceiling existed until determined by Rent Administrator, and until then the rights of the parties were those fixed by their lease agreement. *Wilkerson* v. *Montgomery* (D. C. Mun. App. 1946, 47 A. 2d 102).

Under this chapter, Rent Administrator cannot set aside a valid and subsisting lease between parties providing for lower rentals than rent ceiling established by Administrator. *Hildebrand* v. *Nee* (D. C. Mun. App. 1947, 54 A. 2d 640).

After Administrator of Rent Control had determined rent ceiling for particular premises, he was without jurisdiction to order that such determination constituted fair and reasonable rent as of beginning of tenancy or to order refund by landlord and rule that upon payment of such refund, landlord should not be liable for damages or penalties. *Kern* v. *Cogswell* (D. C. Mun. App. 1948, 59 A. 2d 793).

The ruling of the Administrator that since the records of expenses for the year 1941 had become unavailable, he was entitled to take a later year as a base and compare subsequent years with such base year, was error. The Administrator may not substitute 1945 or any other year for the base year for this would amount to an administrative amendment of an act of Congress. *Corey* v. *Fitzgerald* (D. C. Mun. App. 1950, 73 A. 2d 230).

The Rent Administrator acted beyond his scope of authority when he ordered that there was no proper reason for the subdivision of housing accommodations into two units when in fact for some time there have been and are actually two tenants in occupancy and by improvements landlord has provided accommodations which now lend themselves better than before to double or even triple occupancy. *Block* v. *Means* (D. C. Mun. App. 1949, 64 A. 2d 163).

The order of the Rent Administrator fixing the rent ceiling made under § 45–1602 (1) (c) of Rent Act is not appealable. A finding of fact is not an appealable order. *Weiner* v. *McMahon* (D. C. Mun. App. 1949, 67 A. 2d 525).

There is nothing in the Rent Act to compel an owner to continue to re-rent his property for housing purposes, and when a vacancy occurs, he may remove it from the rental market, occupy it himself, re-lease it or convert it to commercial use. But when the landlord permits its actual use as housing accommodations, even though the lease may state otherwise and even though the property was once free from rent control, the Rent Act applies. *White* v. *Allen* (D.C. Mun. App. 1950, 70 A. 2d 252).

Where proceedings before Administrator were under § 2 (1) (c) of the Rent Act, under which the Administrator determined the rent ceilings for housing accommodations not rented on January 1, 1941, no appeal lies from such determination. *Id.*

Adoption of ceiling

Rent ceiling established by Administrator under Emergency Rent Act constituted a maximum and did not affect lower amounts agreed to by parties. *Rosenthal* v. *J. Leo Kolb, Inc.* (D. C. Mun. App. 1953, 97 A. 2d 925).

A general order of Administrator of Rent Control requiring landlords to file petitions for determination of maximum rent ceilings, and reciting that, until further notice, Administrator will assume, but not concede, that first rent collected by landlord is fair and reasonable, was not an adoption of rent then charged as a "maximum rent ceiling", and landlord's petition for court review of adjustment of rent or service on basis of such order was properly dismissed. *Sager* v. *Stamps* (D. C. Mun. App. 1944, 38 A. 2d 113).

Automatic rent increase

Under amendment to this chapter, providing that maximum rent ceilings for accommodations rented on January 1, 1941, should be increased to 20 percent above rent existing on such date, and that upon filing of a new rent schedule by landlord with administrator, new rent should be adjusted and automatically effective, increased rent became binding upon tenant upon landlord's filing of rent schedule, and a thirty day notice to quit was not a necessary prelude to the increase. *De Foe* v. *Weaver Bros.* (D. C. Mun. App. 1954, 101 A. 2d 515).

Where tenants, petitioning for adjustments in rent and service, at no time made argument that wrongly apportioned taxes or error in calculating automatic statutory increases to landlord had created "peculiar circumstances" or permitted receipt of unduly high rent, questions as to whether two percent calendar year increase in rent had been determined by using proper calendar year basis as provided by law and as to whether taxes had been properly apportioned as to premises were not properly raised, and petitioners' motions for findings with regard thereto were properly denied. *Reynolds* v. *Korman* (D. C. Mun. App. 1953, 96 A. 2d 362).

Ceiling rent as retroactive

Where premises were not rented during 1940, lessee could not recover excess of rent paid for 1942 and 1943 over the ceiling fixed by Rent Administrator in 1944 for such premises. *Moore* v. *Coates* (D.C. Mun. App. 1945, 40 A. 2d 68).

Under this section requiring for accommodations not rented during 1940 the rent and services generally prevailing for comparable accommodations, "as determined by the Administrator", an order by Administrator fixing maximum rent ceiling for particular premises effective March 16, 1943, was intended to apply only prospectively,

and hence tenant could not recover excess of rent paid prior to effective date of order over ceiling fixed by Rent Administrator. *Dekelbaum* v. *Lloyd* (D. C. Mun. App. 1945, 41 A. 2d 174).

Rent Administrator's interpretation of maximum rent regulation as authorizing only prospective rent adjustments was entitled to persuasive weight in determining whether rent adjustment order should have been made retroactive. *Id.*

An order of Rent Administrator fixing maximum rent ceiling on apartment, which was entered after commencement of action to recover amount paid in excess of rent ceiling, had no retroactive effect. *Wilkerson* v. *Montgomery* (D. C. Mun. App. 1946, 47 A. 2d 102).

Construction with other laws

Without an existing maximum rent ceiling or maximum service standard as defined in this section, a proceeding for adjustment under § 45–1604 was unauthorized, and the procedural and review provisions of §§ 45–1608 and 45–1609 were inapplicable. *Sager* v. *Stamps* (D. C. Mun. App. 1944, 38 A. 2d 113)

Section 1608 of this title expressly provides that under stated circumstances, witnout action of Rent Administrator, the findings and recommended order of examiner in proceeding under section 1604 of this title relating to adjustment of rent ceiling and service standards may be deemed findings and order of Administrator, does not require that examiner's findings and order in proceeding under subsection (1) (c) of this section, for establishment of minimum service standard, be regarded as a determination by Administrator, without action on Administrator's part. *Sager* v. *Parker* (D. C. Mun. App. 1947, 55 A. 2d 349).

Equitable estoppel

Where landlord petitioned under Section 4 of Rent Act for an adjustment and where Administrator made no determination, such act did not preclude landlord from asserting a defense to tenant's suit for damages that the examiner's recommended order was not a sufficient basis for tenant's suit. The principles of equitable estoppel do not apply where the legal position first asserted is not successfully maintained. *Parker* v. *Sager* (1949, 174 F. 2d 657, 85 U.S. App. D.C. 4).

Evidence

On appeal from order of rent administrator refusing rent ceiling adjustment to landlord for the furnishing of an apartment, evidence sustained administrator's finding that landlord's rent was sufficiently high in the first instance without requiring any upward adjustment to compensate him for the furnishings. *Zenith Apartments* v. *Adams* (D. C. Mun. App. 1952, 90 A. 2d 223).

Trial court, in considering motion to dismiss, was entitled to take into account the text of the Rent Administrator's findings and also defendant's affidavit. *Banks* v. *Thorwarth* (D. C. Mun. App. 1949, 68 A. 2d 906).

Findings of examiner

Plaintiff was not bound in the present action by the rent examiner's findings where the finding was made by a rent examiner and the record does not show consideration and approval of such findings by the Administrator himself. *Banks* v. *Thorwarth* (D. C. Mun. App. 1949, 68 A. 2d 906).

Furnished premises

Where tenant rents unfurnished premises at ceiling price and rents furniture from a third person in a bona fide arrangement which is not designed to evade section 45–1601 et seq., landlord would have a valid defense against a claim of violation thereof. *Fulton R. Gordon, Inc.* v. *Schram* (D. C. Mun. App. 1945, 44 A. 2d 662).

Landlord whose rent ceiling is fixed on basis of unfurnished rental cannot evade regulation against increase in rent without prior approval of Rent Administrator by renting property furnished. *Id.*

Graduated rentals

Where lease for a term of years provided for a fixed rental for the full term payable monthly on a graduated scale beginning at $125 per month, the monthly payment of $125, payable at time of effective date of this chapter which "froze" rent as of that date, was not a "monthly rental" which controlled rent for remainder of term. *Isquith* v. *Athanas* (D. C. Mun. App. 1943, 33 A. 2d 733).

New housing accommodations

Where new housing accommodation was not rented on critical date under this chapter, rent payable under lease was controlling and valid for period prior to administrator's finding as to rent generally prevailing for comparable housing accommodations. *Delsnider* v. *Gould* (1946, 154 F. 2d 844, 81 U.S. App. D.C. 54).

Where premises rented on critical date under this chapter, was a frame building described as a "shack", and after that date a new owner installed water, plumbing and electricity and a bathroom with tub and overhanging shower, finished walls, installed electric refrigerator and electrically controlled kerosene furnace, rebuilt front entrance, planted flowers in yard and made repairs and completely furnished the house except for silver and linen, the completely equipped and furnished house was a new "housing accommodation" within subsection (1) (A–C) of this section which was not rented on critical date so that ceiling rent was the rent generally prevailing for comparable housing accommodations. *Id.*

In action by tenants against landlord under this chapter to recover overcharges of rent for apartment, wherein landlord contended that apartment came within decontrol provisions of amendment to the act exempting from rent control any housing accommodations, construction of which was completed after March 31, 1948, or which are additional housing accommodations created by conversion after March 31, 1948, evidence sustained finding that conversion of apartment was substantially completed before March 31, 1948, and that therefore apartment was not exempt from rent control. *Wilson* v. *Ann Kurimoto* (D.C. Mun. App. 1954, 104 A. 2d 604).

Where landlord, after critical date, improved a four room house by adding a new room, in a part of which was enclosed a toilet and a bath tub, improved house did not constitute a new housing accommodation necessary for removal of rent ceiling prevailing on critical date. *Marcellino* v. *Gaither* (D. C. Mun. App. 1952, 86 A. 2d 529).

Where defendant on rent freeze date was renting apartment unfurnished and subsequently sublet apartment to plaintiffs completely furnished and supplied with various services, the accommodations sublet to plaintiffs were new accommodations to which ceilings on old accommodations did not apply, and, in absence of a determination of a rent ceiling for such new accommodations, the agreement of the parties controlled as to amount of rent payable, precluding an action by plaintiffs for overceiling rents. *James* v. *Noorbolm* (D. C. Mun. App. 1946, 47 A. 2d 105).

Painting interior and exterior, replacing gutters and downspout, installing new hot water heater and gas range, and repairing and finishing floor did not constitute complete rehabilitation of leased premises, or "substantial capital improvements" or create "new housing accommodations" authorizing overceiling rent. *Mayer* v. *Buchanan* (D.C. Mun. App. 1947, 50 A. 2d 595).

What constitutes new housing accommodations so as to authorize overceiling rent, as distinguished from improvements to old accommodations within this section is ordinarily question of fact, but becomes question of law where evidence is compelling one way or the other. *Id.*

Where landlord removed a staircase and built a bathroom and made other improvements but did not make room for a larger number of tenants, the accommodations did not differ sufficiently to constitute new or different housing accommodations from that previously rented. *Block* v. *Means* (D. C. Mun. App. 1949, 64 A. 2d 163).

The change in the use of space from occupancy by a number of roomers to occupancy of the same space as an apartment by one or more persons, without more, results as a matter of law in the creation of new housing accommodations under the statute. All the circumstances surrounding the change, including details of the use of the space and services rendered should be considered whereupon it becomes a question of fact. *Banks* v. *Thorwarth* (D. C. Mun. App. 1949, 68 A. 2d 906).

The question whether accommodations involved are new, or are old ones with substantial capital improvement, is a question of fact for a jury. *Sawyer* v. *Warner* (D.C. Mun. App. 1949, 63 A. 2d 653).

Notice of increase

Where Congress amended the District of Columbia Emergency Rent Act providing that for housing accommodations rented on January 1, 1941, maximum rent ceiling should be increased to 20 percent above freeze date rental, on filing by landlord with Rent Administrator of a new rent schedule form, tenants were obligated to pay such authorized increase on filing by landlord of his schedule, and tenants were not entitled to 30-day notice. *Stoner* v. *Humphries* (D. C. Mun. App. 1952, 87 A. 2d 528).

Owner's responsibilities

If a rent ceiling is automatically created by statute prior to determination by Administrator of Rent Control, owner must determine for himself the rent he may charge and service he must furnish, and assume responsibility for violation of rent ceiling or minimum service standards, making him liable civilly, though not criminally. *Moore* v. *Coates* (D.C. Mun. App. 1945, 40 A. 2d 68).

When a maximum rent ceiling is established for particular housing accommodations, landlord is entitled to charge and receive that amount and no more regardless of number of occupants, unless order fixing ceiling provides for a carrying rent dependent upon number of occupants. *Glassman* v. *Graver* (D. C. Mun. App. 1948, 56 A. 2d 160).

Purpose

Central purpose of this chapter providing for maximum rent ceilings and minimum service standards is to provide rent ceilings for all housing accommodations. *Janifer* v. *Werner* (1952, 196 F. 2d 244, 90 U. S. App. D. C. 406).

Res judicata

An order of the Administrator would not be res judicata or give rise to the application of the doctrine of estoppel by judgment under the circumstances here presented. *Banks* v. *Thorwarth* (D. C. Mun. App. 1949, 68 A. 2d 906).

Service standard

Under this chapter, assuring a tenant a standard of minimum service and creating a correlative duty to furnish that standard, such duty rested upon landlord and not upon rental collection agent which was not the owner, had no interest in the property, and had not by contract or otherwise undertaken to discharge the duties. *Reyman* v. *Edward H. Jones & Co.* (D. C. Mun. App. 1953, 96 A. 2d 42).

Roomer could not recover against owners of rooming house for penalty provided by this chapter for depriving roomer of minimum service standards where roomer did not establish the minimum service standard under any of the tests enumerated in the chapter. *Lindsey* v. *Watson* (D. C. Mun. App. 1951, 83 A. 2d 226).

Where rental schedule filed by landlord under this section listed "storage locker" as one of services supplied the tenants, this section, if it had effect of requiring continuance by landlord of the "service" of furnishing storage facilities, did not place a greater responsibility on landlord for care of goods stored than that expressly agreed upon by the parties. *Barclay, Inc.*, v. *Maxfield* (D.C. Mun. App. 1946, 48 A. 2d 768).

The word "entitled" in provision of this section and § 45–1610 (a) authorizing tenant to recover damages from landlord upon proof of failure to furnish minimum service standard to which tenant was entitled on freeze date under this chapter, means having a right to, and indicates that service standard consists only of services tenant was entitled to as of right on freeze date, and not those which were furnished gratuitously or as a matter of courtesy. *Roumel* v. *Goldberg* (D. C. Mun. App. 1946, 46 A. 2d 114).

In order to entitle tenant to recover damages from landlord for violation of minimum service standard under this section and § 45–1610, such service need not be specifically contracted for in lease or rental agreement. *Id.*

In landlord's action for possession of leased premises and for money judgment for rent, landlord's alleged failure to make repairs did not constitute a defense on ground that such failure violated "minimum service standard" under this section, where no services from the landlord were required under any criteria for minimum service permitted under this section. *Mitchell* v. *David* (D. C. Mun. App. 1947, 51 A. 2d 375).

The minimum service standard under subsection (1) (c) of this section is a question of fact to be determined by Administrator of Rent Control, and his determination is not an exact computation but is his judgment based on his view of evidence before him. *Sager* v. *Parker* (D. C. Mun. App. 1947, 55 A. 2d 349, affirmed 174 F. 2d 657, 85 U.S. App. D.C. 4).

A determination of minimum service standard under subsection (1) (c) of this section by an examiner could not be accepted by Rent Administrator without his personal consideration of evidence on which examiner arrived at his conclusion, notwithstanding that examiner's order stated that it would be deemed to be that of Administrator unless written request for review was filed within fixed time or unless a rehearing or extension of time was granted within discretion of examiner or Administrator. *Id.*

Unit for rent ceilings

The unit for which a rent ceiling is fixed by this chapter is not the real estate or the premises but the combination of real estate, all personal property, all facilities and all services connected with the use or occupancy and for which rent was payable. *Delsnider* v. *Gould* (1946, 154 F. 2d 844, 81 U.S. App. D.C. 54). See, also, *James* v. *Noorbolm* (D.C. Mun. App. 1946, 47 A. 2d 105).

§ 45–1603. General and special adjustments.

(a) Whenever in the judgment of the Administrator a general increase or decrease since January 1, 1951, in taxes or other maintenance or operating costs or expenses has occurred or is about to occur in such manner and amount as substantially to affect the maintenance and operation of housing accommodations generally or of any particular class of housing accommodations, he may by regulation or order increase or decrease the maximum-rent ceiling or minimum-service standard, or both, for such accommodations or class thereof in such manner or amount as will in his judgment compensate, in whole or in part, for such general increase or decrease. Thereupon such adjusted ceiling or standard shall be the maximum-rent ceiling or minimum-service standard for the housing accommodations subject thereto.

(b) Upon a showing by any landlord of good cause in the judgment of the Administrator that the maximum-rent ceiling on any housing accommodation is substantially lower than the maximum-rent ceiling for comparable housing accommodations located within the same building or group of buildings operated by the same landlord as a single operation, the Administrator may, by special order under this section, adjust such lower ceiling so as to equalize the same with such higher ceiling, and thereupon such adjusted ceilings shall be the maximum-rent ceilings for the housing accommodations subject to such special order.

(c) Upon the showing by any landlord to the satisfaction of the Administrator that the maximum-rent ceilings, on any comparable housing accommodations located within the same building or group of buildings operated by the same landlord as a single operation, will vary in amount due to the effect of General Orders 12 and 13 or similar general orders, the Administrator may, by special order under this section, adjust any or all of such ceilings so as to equalize the same, and thereupon such adjusted ceilings shall be the maximum-rent ceilings for the housing accommodations subject to such special order. (Dec. 2, 1941, 55 Stat. 789, ch. 553, § 3; June 30, 1951, 65 Stat. 100, ch. 192, § 1.)

AMENDMENT

1951—Subsec. (a) was amended by act June 30, 1951, which substituted "Jan. 1, 1951" for "Jan. 1, 1941."

Subsecs. (b) and (c) were added by act June 30, 1951.

EFFECTIVE DATE OF 1951 AMENDMENT

Amendment of section by act June 30, 1951, effective July 1, 1951, see § 2 of act June 30, 1951, set out as a note under § 45–1601.

§ 45–1604. Petition for adjustment.

(a) Any landlord or tenant may petition the Administrator to adjust the maximum-rent ceiling applicable to his housing accommodations on the ground that such maximum-rent ceiling is, due to peculiar circumstances affecting such housing accommodations, substantially higher or lower than the rent generally prevailing for comparable housing accommodations; whereupon the Administrator may by order adjust such maximum-rent ceiling to provide the rent generally prevailing for comparable housing accommodations as determined by the Administrator.

(b) Any landlord may petition the Administrator to adjust the maximum-rent ceiling or minimum-service standard, or both, applicable to his housing accommodations to compensate for (1) a substantial rise in taxes or other maintenance or operating costs or expenses over those prior to January 1, 1951, or (2) a substantial capital improvement including furniture and furnishings or alteration made since January 1, 1951; whereupon the Administrator may by order adjust such maximum-rent ceiling or minimum-service standard in such manner or amount as he deems proper to compensate therefor, in whole or in part, if he finds such adjustment necessary or appropriate to carry out the purposes of this chapter: *Provided,* That no such adjusted maximum-rent ceiling or minimum-service standard shall permit the receipt of rent in excess of the rent generally prevailing for comparable housing accommodations as determined by the Administrator.

(c) Any tenant may petition the Administrator on the ground that the service supplied to him is less than the service established by the minimum-service standard for his housing accommodations; whereupon the Administrator may order that the service be maintained at such minimum-service standard, or that the maximum-rent ceiling be decreased to compensate for a reduction in service, as he deems necessary or appropriate to carry out the purposes of this chapter.

(d) Any landlord may petition the Administrator for permission to reduce the service supplied by him in connection with any housing accommodations; whereupon the Administrator, if he determines that the reduction of such service is to be made in good faith for valid business reasons and is not inconsistent with carrying out the purposes of this chapter, may, by order, reduce the minimum-service standard applicable to such housing accommodations and adjust the maximum-rent ceiling downward in such amount as he deems proper to compensate therefor.

(e) Any tenant may petition the Administrator to adjust the maximum-rent ceiling applicable to his housing accommodations on the ground that such maximum-rent ceiling permits the receipt of an unduly high rent; whereupon the Administrator may by order adjust such maximum-rent ceiling in such manner or amount as shall, in his judgment, effectuate the purposes of this chapter and provide a fair and reasonable rent for such housing accommodations, but not less than the generally prevailing rate for comparable housing accommodations.

(f) A petition made pursuant to this section shall be subject to the provisions of sections 45–1608 and 45–1609 of this chapter. Any adjusted maximum-rent ceiling or minimum-service standard ordered pursuant to this section shall be the maximum-rent ceiling or minimum-service standard for the housing accommodations subject thereto; except that, in the event that the adjustment order is stayed or set aside by the court in accordance with section 45–1609 of this chapter, the maximum-rent ceiling and minimum-service standard theretofore applicable to such housing accommodations under this chapter remain in full force and effect.

(g) Upon the expiration of forty-five days after the date of the filing of any petition by any landlord for adjustment of the maximum-rent ceiling under the provisions of subsection (b) of this section, the maximum-rent ceiling for the housing accommodations covered by such petition automatically shall become the ceiling requested in such adjustment petition, unless and until such adjustment petition shall have been finally disposed of by the Administrator or his office, pursuant to the provisions of this section and the provisions of sections 45–1608 and 45–1609. Upon such final disposition, if the maximum-rent ceiling provided by this subsection during the pendency of such adjustment petition shall exceed the maximum-rent ceiling as finally disposed of by the Administrator or his office, any tenant having paid such excess or any part thereof shall be entitled to a refund to the extent of such payment, but the landlord shall not be liable for any penalties under the provisions of this chapter. (Dec. 2, 1941, 55 Stat. 790, ch. 553, § 4; June 30, 1950, 64 Stat. 310, ch. 428, § 3; June 30, 1951, 65 Stat. 100, ch. 192, § 1.)

AMENDMENTS

1951—Act June 30, 1951, amended section generally, and among other changes, added subsec. (g).

1950—Subsec. (b) was amended by act June 30, 1950, which added the proviso thereto.

EFFECTIVE DATE OF 1951 AMENDMENT

Amendment of section by act June 30, 1951, effective July 1, 1951, see § 2 of act June 30, 1951, set out as a note under § 45–1601.

NOTES TO DECISIONS

Administrator's determination

Ruling of Administrator that since the records of expenses for the year 1941 had become unavailable, he was entitled to take a later year as a base and compare subsequent years with such base year, was error. The Administrator may not substitute 1945 or any other year for the base year, for this would amount to an administrative amendment of an act of Congress. *Corey* v. *Fitzgerald* (D. C. Mun. App. 1950, 73 A. 2d 230).

Admissibility of evidence

A landlord, basing his right under subsection (b) of this section to increased ceilings for rents because of increased costs, must show an increase in present and anticipated future costs, and records showing costs of landlord's predecessor are entirely competent to make

such a showing, if the landlord shows that such records are applicable to himself. *Stokes* v. *Realest Corp.* (D. C. Mun. App. 1948, 60 A. 2d 532).

Facts agreed to by petitioner's counsel but which did not appear in the examiner's statement of evidence or in any other evidentiary form in the record and carrying neither the approval nor certification of the Rent Administrator, are not part of the record and cannot be considered on appeal. *Bailey* v. *Maple* (D. C. Mun. App. 1949, 63 A. 2d 333).

Adoption of ceiling

A determination of rent ceiling is made when no frozen ceiling exists, and an adjustment is made under this chapter for cause shown. *Parker* v. *Williams* (D. C. Mun. App. 1951, 81 A. 2d 653).

Under this chapter, rental rate of premises, rented on January 1, 1941, became the automatic or frozen ceiling. *Id.*

A general order of Administrator of Rent Control requiring landlords to file petitions for determination of maximum rent ceilings, and reciting that, until further notice, Administrator will assume, but not concede, that first rent collected by landlord is fair and reasonable, was not an adoption of rent then charged as a "maximum rent ceiling", and landlord's petition for court review of adjustment of rent or service on basis of such order was properly dismissed. *Sager* v. *Stamps* (D. C. Mun. App. 1944, 38 A. 2d 113).

Where petitioner did not submit rent schedule for approval but instead accepted previously approved schedules, as the legal rent ceilings, and abided by those schedules, the established rent ceilings were legal, at least from the time of acquisition of the property by the present landlord. *Fairmac Corp* v. *Roberts* (D. C. Mun. App. 1949, 67 A. 2d 684).

Capital improvement

Moneys spent for new electric refrigerators and for installation of an oil burner are not such expenditures as to be considered capital improvements. *Sharpe* v. *Goldwyn* (D. C. Mun. App. 1949, 65 A. 2d 185).

The term "substantial capital improvement" means a substantial betterment from the viewpoint of housing accommodations and not necessarily from the viewpoint of the landlord's investment. A replacement of the coal and heating unit with an oil burning unit does not constitute a substantial capital improvement. *Rosen* v. *Powers* (D. C. Mun. App. 1949, 65 A. 2d 200).

Commercial and noncommercial portions

Where there is a single tendency and nothing in the record to show that either landlord or tenant ever regarded it as divisible, no separate toilet facilities for the housing and alleged commercial part thereof, only one heating unit, one meter for electricity, gas and water, it was error for Rent Administrator to rule that the unit was both a commercial and housing accommodation. *Wayne* v. *Burke* (D. C. Mun. App. 1949, 63 A. 2d 669).

Conclusiveness of rulings

An administrator is not bound to follow an earlier ruling which he considered improper. *Bailey* v. *Maple* (D. C. Mun. App. 1949, 63 A. 2d 333).

Construction with other laws

Without an existing maximum rent ceiling or maximum service standard as defined in § 45–1602, a proceeding for adjustment under this section was unauthorized, and the procedural and review provisions of §§ 45–1608 and 45–1609 were inapplicable. *Sager* v. *Stamps* (D. C. Mun. App. 1944, 38 A. 2d 113).

Discretion of administrator

Under this section relating to adjustments of maximum rent, power of rent administrator is discretionary and is coupled with duty to maintain rent ceilings in a given instance to that of the rent scale generally prevailing for comparable housing accommodations, and the director is not required as a matter of law to grant a landlord adjustments for capital improvements. *Zenith Apartments* v. *Adams* (D. C. Mun. App. 1952, 90 A. 2d 223).

Dismissal

There was no error in summarily dismissing tenant's petition for adjustments in rent and service where tenant was no longer a resident of premises. *Reynolds* v. *Korman* (D. C. Mun. App. 1953, 96 A. 2d 362).

Where it appears that after reversal of the original judgment and remand, there was a lapse of eleven months before case was calendared for trial, under rule 37 (e) of the Municipal Courts, defendant was entitled at most to a dismissal without prejudice. If an order of dismissal had been entered, plaintiff would be free to file action anew since dismissal would not have been an adjudication on the merits, and defendant was not prejudiced by denial of motion to dismiss. *Clarke* v. *Cleckley* (D. C. Mun. App. 1950, 71 A. 2d 616).

Landlord's contention that there is no authority in law for dismissal of the petition except for want of prosecution is clearly without merit. Where petitioner fails to show a basis for relief, the administrator must of necessity deny relief. Whether such denial takes the form of a dismissal or otherwise is immaterial. *Rosen* v. *Powers* (D. C. Mun. App. 1949, 65 A. 2d 200).

Equitable estoppel

Where landlord petitioned under Section 4 of Rent Act for an adjustment, and where Administrator made no determination, this did not preclude landlord from asserting a defense to tenant's suit for damages that the examiner's recommended order was not a sufficient basis for tenant's suit. The principles of equitable estoppel do not apply where the legal position first asserted is not successfully maintained. *Parker* v. *Sager* (1949, 174 F. 2d 657, 85 U. S. App. D. C. 4).

Where findings as to maximum rent ceilings were not appealed from and were made as necessary part of order by rent administrator increasing rent on petition of landlord, landlord, who accepted such increases, was estopped from attacking findings on which increases were based. *Cogswell* v. *Aiken* (D. C. Mun. App. 1951, 82 A. 2d 749).

Evidence

On appeal from order of rent administrator refusing rent ceiling adjustment to landlord for the furnishing of an apartment, evidence sustained administrator's finding that landlord's rent was sufficiently high in the first instance without requiring any upward adjustment to compensate him for the furnishings. *Zenith Apartments* v. *Adams* (D. C. Mun. App. 1952, 90 A. 2d 223).

Expense ratio

Where examiner averaged the expenses for the years 1942 through 1947, inclusive, and had allowed a sufficient rental increase to make up for the excess of such averaged operating expenses over the operating expenses for 1941, such method was improper because it failed to take into account the various items of operating expenses for the base year and intervening years. *Shapiro* v. *Bombardier* (D. C. Mun. App. 1949, 63 A. 2d 772).

Findings conclusive

Where the Rent Administrator, upon review of the findings of the examiner, states his findings of fact or affirms the facts as found, such findings are conclusive if supported by substantial evidence. *Winkler* v. *Ballard* (D. C. Mun. App. 1949, 63 A. 2d 669).

Findings of fact

Rent Administrator's finding of fact, concededly authorized and material to unappealed ruling made by him in proceeding to adjust upward the rent ceilings, could not subsequently be attacked in another proceeding between the same parties. *Aiken* v. *Cogswell et al.* (1952, 201 F. 2d 705, 91 U. S. App. D. C. 339).

Where, after remand of the case by the court, the examiner went to the premises and inspected them in the presence of the landlord, the actual appearance and condition of the units certainly constituted evidence which probably spoke louder and clearer on the issue than would any other type of evidence. Accordingly, the findings must be sustained. *Block* v. *Tenants* (D. C. Mun. App. 1950, 70 A. 2d 59).

In a petition for increased rent because of increased operating costs and substantial rise in taxes, Administrator was justified in using the fiscal year basis rather than the calendar year. *Dysert* v. *Ring Management Company* (D. C. Mun. App. 1949, 69 A. 2d 655).

Where the Administrator, by reference in his findings to page numbers of the record, has made the actual figures used by the examiner or Administrator easily ascertainable, it is sufficient to indicate the basis of calculation of formula adopted by the Administrator. *Id.*

The basis of calculation used by the Rent Administration must be in sufficient detail so that the parties may, if they desire, raise suitable objections before the Administrator and on appeal. The basis of calculations used in different cases must be reasonably consistent and if a different method is used in an individual case, reasons for such change in method must be shown. *Ostrow* v. *Horning, Inc.* (D. C. Mun. App. 1949, 69 A. 2d 277).

Evidence substantiated findings of Administrator that a distinction exists between apartments on the one hand and hotel rooms for transit guests on the other, and that the cost of supplying maid service, linen, etc. is approximately the same for different rooms regardless of size, location, or relative rental value, and that room rent as distinguished from apartment rent had been customarily increased on a flat dollarwise basis. *Sulzer* v. *Bellevue Inc.* (D. C. Mun. App. 1949, 66 A. 2d 407).

Administrator, under the statute, may not use different methods in ordering rent increases in different cases except where a reasonable basis exists for such variations. *Id.*

Whether, as a result of peculiar circumstances, the rent ceilings are substantially lower than the rent generally prevailing for comparable housing accommodations is a question to be decided by the Rent Administrator. *Fairmac Corp.* v. *Roberts* (D. C. Mun. App. 1949, 67 A. 2d 684).

Grounds for increase

Landlords are entitled to receive increased rentals due to increased price levels only, and not because of other elements, such as those making up for deferred maintenance. *Proctor* v. *Miller* (D. C. Mun. App. 1949, 63 A. 2d 665).

Housing and rent act

The authority of Congress to enact legislation for control of rents in the states is not the same exercised in controlling rents in the District of Columbia, and the Housing and Rent Acts of 1947 and 1948, U. S. Code, title 50 App., §§ 1894, 1901, authorizing a 15 percent increase in rent when voluntarily agreed to by landlord and tenant is not unconstitutional because specially made inapplicable to the District of Columbia. *Thorn* v. *Miller* (D. C. Mun. App. 1948, 60 A. 2d 223).

In enacting the Housing and Rent Acts of 1947 and 1948, U. S. Code, title 50 App., §§ 1894, 1901, Congress did not intend thereby to amend this chapter to authorize a 15 percent increase in rent where voluntarily agreed to between landlord and tenant by written lease. *Id.*

Insufficiency of petition

Burden was on the petitioner to supply a full and complete statement of all the evidence introduced at the hearing. If such statement failed to supply several necessary elements which may or may not have been included in the evidence, the Administrator might assume that any statement of evidence not submitted contained substantial support for the findings of fact and recommended order of the examiner. *Crisp* v. *Giles* (D. C. Mun. App. 1949, 65 A. 2d 204).

Where petition failed to state the total rents collected by the landlord before petition was filed or those authorized by the Rent Administrator's order, and was otherwise incomplete, decision of Administrator will be affirmed. *Crisp* v. *Caldwell* (D. C. Mun. App. 1949, 65 A. 2d 206).

Minimum service

Where Rent Administrator had refused to grant relief on tenant's petition charging landlord with failing to maintain minimum service and tenant did not seek review of that determination, the same matter could not be reexamined in action against landlord for damages for failure to maintain minimum service. *Hicks* v. *Behrend* (D. C. Mun. App. 1945, 40 A. 2d 78).

If a tenant feels that landlord fails to comply with minimum service standard, tenant may seek relief before Rent Administrator or he may bring a court action for double value of services refused or for $50, whichever is greater, but he cannot pursue his remedy before Administrator and, failing in that, retry the same issues in action for damages. *Id.*

Though Administrator committed an error in his findings, it was harmless where petitioner alleged that there had been a diminution in the minimum service standard on ground that owners had withdrawn a resident manager, and instead of paying rent on the premises to the manager the petitioner was thereafter compelled to pay it at a downtown office. Moreover no evidence was submitted as to how much the rental value of the apartment was reduced. *Newberry* v. *H. L. Rest Company* (D. C. Mun. App. 1949, 65 A. 2d 342).

Nature of proceeding

Before Administrator of Rent Control can make an adjustment of rent ceiling, there should be some written petition therefor, stating grounds on which adjustment is sought, in order that all parties, including Administrator, may be informed of nature of proceeding and go forward in an orderly manner. *Marcellino* v. *Gaither* (D. C. Mun. App. 1952, 86 A. 2d 529).

In tenant's proceeding for rent reduction, where landlord did not file petition for adjustment of rent ceiling and did not formally ask for affirmative relief, but instead at close of hearing moved orally for an order setting a ceiling on premises, request was too informal in nature and was properly denied. *Id.*

Landlord's petition filed with Rent Administrator for an increase in rentals to compensate for increased maintenance, operating costs, taxes, and capital improvements was not in the nature of an "in rem" action, but designation of the proceedings by an examiner of the Rent Administration as an in rem action, if error, was harmless. *Stokes* v. *Realest Corp.* (D. C. Mun. App. 1948, 60 A. 2d 532).

Operating expenses or costs

Legal fees paid to an attorney for the dissolution of a corporation formerly owning the building, and expenditures for refinancing the mortgage thereon, are not operating expenses. *Sharpe* v. *Goldwyn* (D. C. Mun. App. 1949, 65 A. 2d 185).

Peculiar circumstances

Where tenants, petitioning for adjustments in rent and service, at no time made argument that wrongly apportioned taxes or error in calculating automatic statutory increases to landlord had created "peculiar circumstances" or permitted receipt of unduly high rent, questions as to whether two per cent calendar year increase in rent had been determined by using proper calendar year basis as provided by law and as to whether taxes had been properly apportioned as to premises were not properly raised, and petitioners' motions for findings with regard thereto were properly denied. *Reynolds* v. *Korman* (D. C. Mun. App. 1953, 96 A. 2d 362).

Permissibility of increased rent ceilings under revised statute for housing accommodations used by rent control administrator as comparables in establishing rent ceiling for other property, without any statutory provision allowing increase of rent for such property, did not constitute "peculiar circumstances" entitling owner thereof to increase in rent. *Torre* v. *Berkowitz* (D. C. Mun. App. 1953, 93 A. 2d 87).

"Peculiar circumstances" rendering rent ceiling for certain housing accommodations lower than that generally prevailing for comparable accommodations, so as to authorize rent increase under this chapter, are unusual or special circumstances preventing landlord and tenant from bargaining freely. *Id.*

"Peculiar circumstances" means unusual or special circumstances which keep the landlord and tenant from bargaining freely and does not include improvements in streets, paving or planting of shrubbery, etc. *Bailey* v. *Maple* (D. C. Mun. App. 1949, 63 A. 2d 333).

Peculiar circumstances are those which negate the existence of ordinary bargaining considerations or are abnormal circumstances not generally present in a normal rental bargain. *Fairmac Corp.* v. *Roberts* (D. C. Mun. App. 1949, 67 A. 2d 684).

Peculiar circumstances are those which negate the existence of ordinary bargaining considerations or are abnormal circumstances not generally present in a normal

rental bargain. *Cox* v. *Cogswell* (D. C. Mun. App. 1949, 69 A. 2d 659).

Prerequisites for new ceiling

Realty broker's filing of petition for adjustment of rent with rent administrator did not automatically increase rent ceiling or entitle landlord to charge the requested increase. *J. Leo Kolb Co., Inc.* v. *Williams* (D. C. Mun. App. 1955, 111 A. 2d 469).

Fact that a landlord has so changed housing accommodations on which rent ceiling had been established as to convert accommodations into new accommodations, does not entitle landlord to collect a contractual interim ceiling without first filing an application for rent increase. *Fowler* v. *Stanford* (D. C. Mun. App. 1952, 89 A. 2d 885).

Prerequisites for petition

Prerequisite to a § 4 proceeding for adjustment is a rent ceiling in effect and without such a ceiling, the petition for adjustment does not apply. Section 4 clearly covers improvements made after rent ceiling are in effect. *Cox* v. *Cogswell* (D. C. Mun. App. 1949, 69 A. 2d 659).

Question of fact

In suit by tenants against landlord for overcharges of rent for period of 46 weeks, wherein it appeared that for the last three weeks only, receipts had been issued by landlord containing words "including parking lot", question whether for the last three weeks a new and separate agreement had been reached for charge of rent for parking space, or whether landlord continued to exact an overcharge in the guise of a parking charge, was one of fact. *Clark* v. *Coziahr et al.* (D. C. Mun. App. 1954, 102 A. 2d 311).

An acceptance comprehends receipt of something and intention to retain it, and that intention is usually a question of fact. It is always a question of fact where, from other uncontroverted facts relative to intention, contradictory inferences may be drawn. *Little* v. *French* (D. C. Mun. App. 1950, 71 A. 2d 534).

In an action for possession of the apartment for landlord's immediate and personal use, trial judge was correct when he refused to take from the jury the question as to whether the landlord had accepted rent payments for period after the expiration of the notice to quit. *Id.*

Rent for comparable accommodations

Where premises rented on critical date under Emergency Rent Act, was a frame building described as a "shack", and after that date a new owner installed water, plumbing and electricity and a bathroom with tub and overhanging shower, finished walls, installed electric refrigerator and electrically controlled kerosene furnace, rebuilt front entrance, planted flowers in yard and made repairs and completely furnished the house except for silver and linen, the completely equipped and furnished house was a new "housing accommodation" within Emergency Rent Act which was not rented on critical date so that ceiling rent was the rent generally prevailing for comparable housing accommodations. *Delsnider* v. *Gould* (1946, 154 F. 2d 844, 81 U. S. App. D. C. 54).

Under subsection (a) of this section, authority of the administrator to adjust rents is not based merely upon peculiar circumstances, but is limited to adjustments only when the rent ceiling is due to peculiar circumstances affecting the complained of housing accommodations substantially higher or lower than the rent prevailing for comparable housing accommodations. *Thorn* v. *Miller* (D. C. Mun. App. 1948, 60 A. 2d 223).

Where petitioner had received two increases, making rent ceiling not greatly disproportionate to ceiling on neighboring property, and fixed with tenant's consent, Administrator is not bound to grant additional increase. *Bailey* v. *Maple* (D. C. Mun. App. 1949, 63 A. 2d 333).

Where an increase was granted for some apartments, including that of the petitioner, to compensate for increased expenditures made on the entire apartment house, such a result could be justified only if there were a finding that the 1950 rentals for some of the apartments were, due to peculiar circumstances, substantially lower than the rentals generally prevailing for comparable housing accommodations. Since no such finding was made, the Administrator was without power to act. *Newberry* v. *H. L. Rest Company* (D. C. Mun. App. 1949, 65 A. 2d 342).

Rental and expense ratio

Subsection (b) of this section providing that any landlord may petition Rent Administrator to adjust maximum-rent ceiling or minimum service standard applicable to his accommodations to "compensate" for substantial rise in taxes or other maintenances or operating costs or expenses or a substantial capital improvement or alteration, was not intended to make up for past losses, but to permit administrator to maintain in whole or in part same ratio between rentals and expenses as existed on freeze date, or to balance rentals with expenses. *Stokes* v. *Realest Corp.* (D. C. Mun. App. 1948, 60 A. 2d 532).

Administrator is not concerned with net income from housing accommodations but only with increase in rent sufficiently to compensate in whole or in part for increased operating expenses. *Hall* v. *Ring Management Company* (D. C. Mun. App. 1949, 63 A. 2d 656).

Where petitioner rested entire case on position that since 1947 operating expenses exceeded those of 1940 by more than 25 percent, the rental should be similarly increased, such a contention is erroneous since it is not the yardstick laid down by the Rent Act. To compensate the landlord properly, a comparison between a dollar increase in expenses and a similar dollar increase in rentals must be made. *Crips* v. *Giles* (D. C. Mun. App. 1949, 65 A. 2d 204).

The Rent Administrator is not to adjust rent on a net income basis. Therefore, on a petition for the adjustment of rent on account of increased costs, the previous increases allowed on a different basis are neither relevant nor material. *Rosen* v. *Powers* (D. C. Mun. App. 1949, 65 A. 2d 200).

Where Rent Administrator averaged expenses for the years 1941 to 1947 inclusive, deducted the 1941 expenses from such average and granted a sufficient rent increase to produce the difference, it is improper and orders based thereon must be reversed. *Proctor* v. *Miller* (D. C. Mun. App. 1949, 63 A. 2d 665).

Rent Act makes no provision for a fair return to the landlord and we have ruled that net income is not a proper basis for adjustment of rents. *Cox* v. *Cogswell* (D. C. Mun. App. 1949, 69 A. 2d 659).

Increases may be granted where a proper showing is made that costs and expenses have increased and where a finding is made, based upon substantial evidence, that the new schedules do not exceed those existing for comparable housing accommodations. *Ostrow* v. *Horning, Inc.* (D. C. Mun. App. 1949, 69 A. 2d 277).

Where only a portion of the units in a building are involved, there is no reason why they should not be compared with other units in the same building since units such as these are likely more comparable to other units in the same building than to units in another building in another location. *Block* v. *Tenants* (D. C. Mun. App. 1950, 70 A. 2d 59).

Res judicata

Where, in prior action against member-tenant for possession of apartment in a cooperatively owned apartment house, issue of rent overcharge was considered and determined by a court having jurisdiction of the parties and subject matter, such determination would have to be considered a final adjudication and would, so long as judgment in the prior action remained unmodified, be res judicata on issue of overcharge in subsequent action between the same parties for double the overcharge. *Usher* v. *1015 N. Street, N. W. Cooperative Association, etc.* (D. C. Mun. App. 1956, 120 A. 2d 921).

Where, in prior action for possession of apartment in cooperatively owned apartment house for nonpayment of rent, member-tenant's contention that there had been an overcharge of rent was determined adversely to member-tenant, and judgment therein remained unmodified, such judgment, which was res judicata as to cooperative association, was also res judicata as to association's agents, who collected the rent, in subsequent action by member-tenant against association and the agents for double overcharges of rent for the apartment. *Id.*

Retroactive effect

Where, because of substantial improvements made to apartment after January 1, 1951, adjustment of rent ceiling was sought in petition filed by realty broker on June 20, 1951, but rent administrator did not act upon

petition, District of Columbia Emergency Rent Act of 1951, which became effective on July 1, 1951, and which provided that 45 days after filing of petition requested adjusted ceiling would automatically become legal rent ceiling unless and until adjustment petition should have been finally disposed of, was applicable, even though 1951 act did not refer to pending petitions, but retroactive effect could not be given to 45 day period fixed in statute and increased rent could not be charged until 45 days had elapsed after effective date of act. *J. Leo Kolb Co., Inc.* v. *Williams* (D. C. Mun. App. 1955, 111 A. 2d 469).

Adjustment in rent ceiling granted by administrator had no retroactive effect and operated prospectively only. *Morning Star Lodge No. 40* v. *Harris* (D. C. Mun. App. 1953, 93 A. 2d 288).

Substitution of parties

Where a new landlord appears during the pendency of a proceeding, a substitution of parties may be made, even on appeal, because the fundamental issue is whether the expenses of the operation of the property, regardless of ownership, have increased. *Dysert* v. *Ring Management Company* (D. C. Mun. App. 1949, 69 A. 2d 655).

Records show that the Rent Administrator was fully justified in his finding that the landlord's records for recent years were not kept according to sound accounting principles. Where it is apparent that the accountant's statement was prepared from such records, such evidence is insufficient. *Rosen* v. *Powers* (D. C. Mun. App. 1949, 65 A. 2d 200).

§ 45–1605. Prohibitions.

(a) It shall be unlawful, regardless of any agreement, lease, or other obligation heretofore or hereafter entered into, for any person to demand or receive any rent in excess of the maximum-rent ceiling, or refuse to supply any service required by the minimum-service standards, or otherwise to do or omit to do any act in violation of any provision of this chapter or of any regulation, order, or other requirement thereunder, or to offer or agree to do any of the foregoing.

(b) No action or proceeding to recover possession of housing accommodations shall be maintainable by any landlord against any tenant, notwithstanding that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled, unless—

(1) The tenant is (A) violating an obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this chapter or any regulation or order thereunder applicable to the housing accommodations involved or an obligation to surrender possession of such accommodations) or (B) is committing a nuisance or using the housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes; or

(2) The landlord seeks in good faith to recover possession of the property for his immediate and personal use and occupancy as a dwelling: *Provided,* That in the case of housing accommodations in a structure or premises owned or leased by a cooperative corporation or association no such action or proceeding under this paragraph or paragraph (3) of this section shall be maintained unless the landlord is a bona fide owner of stock in, or member of, such cooperative corporation or association and has actually paid in in cash at least 20 per centum of the full purchase price of the stock, proprietary lease, or other evidence of ownership entitling the landlord to possession of such housing accommodations, or was, immediately prior to July 1, 1951, entitled to recover possession.

(3) The landlord has in good faith contracted in writing to sell the property for immediate and personal use and occupancy as a dwelling by the purchaser and that the contract of sale contains a representation by the purchaser that the property is being purchased by him for such immediate and personal use and occupancy; or

(4) The landlord seeks in good faith to recover possession for the immediate purpose of substantially altering, remodeling, or demolishing the property and replacing it with new construction, the plans for which altered, remodeled, or new construction having been filed with, and approved by, the Commissioners of the District of Columbia; or

(5) The landlord seeks in good faith to recover possession for the immediate purpose of discontinuing the housing use and occupancy for a continuous period of not less than six months, during which period, commencing on the date possession is recovered under this subsection, it shall be unlawful for the owner of such housing accommodations or his agent to demand or receive rent for the same, and any person paying such rent may bring an action for double the amount of rent so paid, pursuant to the provisions of section 45–1610; or

(6) The landlord, being a recognized school or an accredited nonprofit university has a bona fide need for the premises for educational, research, administrative, or dormitory use.

(c) It shall be unlawful for any person to remove, or attempt to remove, from any housing accommodations the tenant or occupant thereof or to refuse to renew lease or agreement for the use of such accommodations because such tenant or occupant has taken or purposes to take action authorized or required by this chapter or any regulation, order, or requirement thereunder. (Dec. 2, 1941, 55 Stat. 791, ch. 553, § 5; Sept. 26, 1942, 56 Stat. 759, ch. 564, § 1; Aug. 1, 1947, 61 Stat. 721, ch. 442; Apr. 19, 1949, 63 Stat. 49, ch. 73, § 4; June 30, 1951, 65 Stat. 102, ch. 192, § 1.)

AMENDMENTS

1951—Subsec. (a) was amended by act June 30, 1951, which deleted the last sentence of the first paragraph referring to refunds.

Subsecs. (b) (2) and (5) were substantially amended by said act which also added subsec. (b) (6).

1949—Subsec. (b) (2) was amended by act Apr. 19, 1949, which added the proviso.

1947—Subsec. (b) was amended by act Aug. 1, 1947, which added paragraph 6.

1942—Subsec. (b) was amended by act Sept. 26, 1942, which added paragraph (5).

EFFECTIVE DATE OF 1951 AMENDMENT

Amendment of section by act June 30, 1951, effective July 1, 1951, see § 2 of act June 30, 1951, set out as a note under § 45–1601.

RECONTROL OF ACCOMMODATIONS

See note under § 45–1601.

NOTES TO DECISIONS

Agent

Where complaint in action under this chapter stated only that landlord's rental agent failed to provide minimum service in violation of standards fixed by rent ad-

ministrator, and neither claimed nor showed any other basis for liability, and neither this chapter nor lease agreement imposed such duty on agent, under no stated facts which could be proved in support of tenant's claim would tenant be entitled to relief, and summary judgment for agent was properly granted. *Reyman* v. *Edward H. Jones & Co.* (D.C. Mun. App. 1953, 96 A. 2d 42).

Agreement of parties

Unless premises have been decontrolled, rent ceiling remains effective regardless of any agreement to the contrary made by the landlord and tenant. *Jess Fisher & Co.* v. *Hicks* (D. C. Mun. App. 1952, 86 A. 2d 177).

Approval of plans

Where department of building inspection had issued raze permit authorizing demolition of demised buildings and had issued a building permit authorizing erection of shed on the leveled lot, which was to be used as a parking lot, there was sufficient approval of parking lot project plans by District of Columbia commissioners as to entitle landlord to possession of demised premises under this chapter. *Ancher* v. *Lamb* (D. C. Mun. App. 1952, 86 A. 2d 533).

Bad faith

Evidence of ill will between landlord and tenant and a desire by the landlord to dispossess the particular tenant is not evidence of bad faith precluding landlord from obtaining possession under this section giving landlord right of possession if for any reason he in good faith is willing to discontinue the housing use and occupancy for a continuous period of not less than six months. *Beckwith et al.* v. *Klein* (D. C. Mun. App. 1953, 93 A. 2d 283).

In tenant's suit against landlords to recover for alleged rental overcharges, fact that landlords had, prior to beginning of tenancy, rented premises to another person at the January 1, 1941, frozen rent ceiling of $41 a month, was sufficient to raise an inference of lack of good faith on part of landlords when they subsequently collected $77.50 a month rental. *Parker* v. *Williams* (D. C. Mun. App. 1951, 81 A. 2d 653).

"Ill will" of landlord seeking possession against tenant on ground that he desires possession in good faith for his own personal occupancy is not automatically established from evidence that there had been a prior rent control proceeding between the parties or from reasonable regulation of tenant's use of leased premises. *Dant* v. *Forsythe* (D. C. Mun. App. 1951, 81 A. 2d 84).

In action by landlord to recover possession of leased premises on ground that he had in good faith contracted to sell property for immediate and personal use, and occupancy as dwelling by purchaser, evidence of looseness and some suspicious circumstances attending sale were by no means strong enough to require trial court or appellate court sitting in review to hold as a matter of law that there was bad faith in transaction or that purchaser had not acquired property for his own use. *Sigmond* v. *Kern* (D. C. Mun. App. 1951, 78 A. 2d 236).

In action by landlord to recover possession of rooming house, petition of landlord filed with rent administrator for an increase of rent could not form basis of a charge of bad faith on part of landlord as attempting to evade this chapter. *Downes* v. *Karsh* (D.C. Mun. App. 1943, 33 A. 2d 620).

The issue of good faith is usually one of fact. Ill will on the part of the landlord toward a tenant, while properly considered as bearing on the landlord's good faith, does not necessarily establish bad faith as a matter of law. *McMahon* v. *Weiner* (D. C. Mun. App. 1949, 67 A. 2d 682).

Broker's commission

Where broker was not a party to alleged illegality of sale contract under this chapter, and in procuring, purchaser did not act with knowledge that alleged illegality existed, broker's right to commission when purchaser was ready, able and willing to proceed with contract, but owner refused to do so, was unimpaired. *Harris* v. *Young* (D. C. Mun. App. 1952, 86 A. 2d 414).

Ceiling prevailing at hearing date

Where order of Rent Administrator stated that maximum rent ceiling on premises was determined to be $135 per month effective January 26, 1943, the order did not have effect of determining the rent ceiling prevailing on the property at the hearing date. *Hicks* v. *Behrend* (D. C. Mun. App. 1945, 40 A. 2d 78).

Choice of occupancy

A landlord who has the choice of several properties should not be prejudiced in desiring occupancy of particular living quarters from tenant thereof. *Dant* v. *Forsythe* (D. C. Mun. App. 1951, 81 A. 2d 84).

This chapter does not prevent an owner from occupying his own premises provided such occupancy is sought in good faith and not for purpose of evading this chapter. *Colwell* v. *Stonebraker* (D.C. Mun. App. 1943, 31 A. 2d 866).

This chapter does not prevent an owner from occupying his own premises provided such occupancy is sought in good faith and not for purpose of evading this chapter. *Shaffer* v. *Bowes* (D.C. Mun. App. 1943, 31 A. 2d 690).

Where defendant occupied room having lowest rental in house at time plaintiff leased entire premises for purpose of making her home there and renting other rooms in house, and plaintiff requested defendant to move to another room as plaintiff desired possession of that room because it was best room from which to operate premises, plaintiff was entitled to possession of such room notwithstanding this chapter. *Id.*

Where owner has several properties available, and it is necessary for him to occupy one, and thereby remove a tenant by sufferance, choice of which property he shall occupy is for owner. *Downes* v. *Karsh* (D.C. Mun. App. 1943, 33 A. 2d 620). See, also, *McSweeney* v. *Wilson* (D.C. Mun. App. 1946, 48 A. 2d 469).

Under this chapter where owner has several properties available, choice of which one he shall occupy is for him, provided such occupancy is sought in good faith and not for purpose of defeating this chapter. *Colwell* v. *Stonebraker* (D.C. Mun. App. 1943, 31 A. 2d 866). See, also, *Shaffer* v. *Bowes* (D.C. Mun. App. 1943, 31 A. 2d 690); *Staves* v. *Johnson* (D.C. Mun. App. 1946, 44 A. 2d 870).

Consent judgment

Where tenant, in landlord's action to recover premises, consented to entry of judgment for landlord after a hearing on the merits, judgment was valid and tenant's subsequent motions to quash writ of restitution and for an indefinite stay of execution were properly overruled. *Morris* v. *Breaker* (D. C. Mun. App. 1944, 38 A. 2d 632).

A writ of restitution would not be quashed for failure of clerk of court to give tenant notice of entry of judgment, where trial court ordered judgment for landlords suing for possession of premises, pursuant to stipulation by which tenant receiving 60-day stay of execution consented to judgment for landlords. *Conrad* v. *Medina* (D. C. Mun. App. 1946, 47 A. 2d 562).

A stipulation that tenant who was granted 60-day stay of execution would consent to judgment for landlords suing for possession of leased housing accommodations, would not be set aside for newly discovered evidence that landlords were aliens incapable of owning realty in District of Columbia, where one landlord had declared his intention of becoming a citizen, and the record intimated that at least one of the landlords was an attaché of a foreign legation. *Id.*

Constitutionality

Subsection (b) of this section does not violate U. S. Const. Amend. 5. *Walsh* v. *Cooper* (D.C. Mun. App. 1943, 31 A. 2d 883).

Construction

Court, in construing this section with reference to right of landlord to bring an action against tenant for possession, cannot imply congressional intent to require notice by landlord to tenant stating reasons for terminating tenancy or attach any condition to the right to bring suit which Congress did not authorize. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

The privileges reserved to owners by this chapter must be reasonably construed and enforced. *Heindrich* v. *Dimas-Aruti* (D. C. Mun. App. 1945, 42 A. 2d 138).

This chapter must be considered as a whole and its sections must be read in connection with each other. *Dunning* v. *Randall Hagner Co.* (D.C. Mun. App. 1949, 63 A. 2d 770).

Actual use of the premises as housing accommodations governs, even though a lease may employ terms other than housing accommodations and indicate a different use intention as in case of property zoned for commercial use. Lease provisions, like the ones here involved, are subservient to the provisions of the Act. *White* v. *Allen* (D.C. Mun. App. 1950, 70 A. 2d 252).

Creation of new tenancy

Where landlord obtained a judgment which established her right to possession under § 45–1601 et seq. and tenant was granted a stay by the court conditioned upon payment of rent, and thereafter tenant bargained with landlord for additional time upon condition that rent would be paid and that it would be the last extension, tenant could not thereafter assert that landlord had created a new tenancy and had abandoned her right to enforce judgment of possession by accepting rent for the extended period. *Trammell* v. *Estep* (D. C. Mun. App. 1945, 42 A. 2d 501).

Defense housing project

This chapter did not apply to defense housing project which had been erected by Navy Department in Washington so as to require United States bringing dispossess proceedings to allege grounds of possession required by subsection (b) of this section, since this chapter does not specifically mention the United States as a landlord, and since statutes which in general terms divest preexisting rights or privileges may not be applied to the sovereign without express words to that effect. *Wittek* v. *United States* (D.C. Mun. App. 1947, 54 A. 2d 747, reversed 171 F. 2d 8, 83 U.S. App. D.C. 377, reversed and remanded 69 S. Ct. 1108, 337 U.S. 346, 93 L. Ed. 1406).

Estoppel

In landlord's action to recover possession, where judgment for possession was entered on December 2, 1941, the fact that tenant had received benefit of stipulation staying execution of judgment to January 31, 1942, did not "estop" tenant from claiming benefit of this chapter which was approved on December 2, 1941, since it was intervention of this chapter which changed the relationship of the parties. *Myers* v. *H. L. Rust Co.* (1943, 134 F. 2d 417, 77 U. S. App. D. C. 218).

Evidence

In action by landlord for possession of housing accommodations pursuant to this section authorizing same if landlord seeks in good faith to recover possession for immediate purpose of discontinuing housing use for continuous period of not less than six months, evidence on behalf of tenant was insufficient to show lack of good faith of landlord. *Beckwith* v. *Klein* (D.C. Mun. App. 1953, 93 A. 2d 283).

While evidence of ill will toward a tenant is properly received in evidence in determining whether landlord seeks possession in good faith or whether his dominant motive is to rid himself of tenant, such evidence must be based on more than mere speculation. *Dant* v. *Forsythe* (D. C. Mun. App. 1951, 81 A. 2d 84).

Where there was no evidence that landlords seeking possession of premises from tenant on ground that landlords desired possession in good faith for personal occupancy was actuated by caprice or malice, landlords were entitled to judgment granting possession, in absence of challenging evidence sufficient to justify a finding of lack of good faith. *Id.*

In landlord's action under this section to recover possession of leased premises for immediate purpose of substantially altering and remodeling property, evidence was sufficient to justify conclusion that possession was sought in good faith. *Conrad* v. *Pisner* (D.C. Mun. App. 1951, 79 A. 2d 780).

In action by landlord against tenant to recover possession of dwelling house on ground that he had in good faith contracted to sell property for immediate and personal use and occupancy as dwelling by purchaser, evidence sustained trial court's finding that plaintiff had in good faith contracted as alleged. *Sigmond* v. *Kern* (D. C. Mun. App. 1951, 78 A. 2d 236).

In action by landlord to recover possession of leased premises on ground that he had in good faith contracted to sell property for immediate and personal use and occupancy as dwelling by purchaser, trial court did not err in accepting evidence tending to destroy any presumption of bad faith which might have arisen from fact that landlord had prosecuted three earlier suits for possession, unsuccessfully, within period of seven months. *Id.*

In possessory action, evidence that landlord on leasing city dwelling for one year informed tenant that landlord wished dwelling back at expiration of year on July 31, 1942, and that landlord's period of occupancy of farm was to expire at end of 1942, sustained determination that landlord sought possession in "good faith" for personal use within this chapter. *Gould* v. *Butler* (D.C. Mun. App. 1943, 31 A. 2d 867).

Evidence that landlord, when leasing property for precisely one year, made it plain that at expiration of lease he wished premises back, reiterated it almost two months before expiration of lease, and sued for possession two months after expiration of lease, sustained determination that landlord required property for "immediate" use, within this chapter. *Id.*

In landlord's action to recover possession of premises for personal use as dwelling, that rent of selected premises is low when contrasted with that of similar housing units, availability of other quarters, objection to or even ill will toward particular tenant, are matters properly admitted in evidence as bearing on "good faith" of landlord, but no one, or all in combination, necessarily constitute "bad faith". *Colwell* v. *Stonebraker* (D.C. Mun. App. 1943, 31 A. 2d 866).

In landlord's action to recover possession of apartment for her personal use, evidence that gasoline rationing made it impossible for landlord's husband to continue to commute from their home to his office in the apartment building supported finding of "good faith" of landlord in seeking possession of apartment. *Id.*

Where tenant submitted question of landlord's failure to maintain minimum service to Rent Administrator, it was tenant's duty to present all evidence bearing on the question and fact that certain matters existing at date of hearing before Administrator were not mentioned in petition before Administrator would not authorize action for damages. *Hicks* v. *Behrend* (D. C. Mun. App. 1945, 40 A. 2d 78).

Where landlord sues for possession of dwelling house, claiming that she required property for immediate purpose of making substantial alterations and remodeling, evidence as to whether landlord could obtain from War Production Board necessary priority orders for the work, was sufficient for jury and would not justify ruling as matter of law that there was not good faith in landlord's claim or that her need for property was not immediate within this section. *Klein* v. *Hilton* (D. C. Mun. App. 1945, 40 A. 2d 77).

Under subsection (b) (1) of this section landlord seeking possession of dwelling house, claiming that she required property for immediate purpose of making substantial alterations and remodeling, was not required to prove that she could obtain from the War Production Board the necessary priority orders for the work. *Id.*

In action by landlord to recover possession of apartment for his immediate and personal use, where landlord's good faith is an issue, evidence of the existence of other available apartments in the building is admissible. *Abbott* v. *Fant* (D. C. Mun. App. 1944, 38 A. 2d 618).

Evidence sustained plaintiff's claim that possession of dwelling was sought for her own immediate personal use as a residence under exception to this section. *Miller* v. *Prophet* (D. C. Mun. App. 1944, 37 A. 2d 450).

Evidence sustained finding that religious corporation, which sought to recover house from tenant for use for students to whom corporation was obligated to provide free food and shelter, sought recovery of premises in good faith as required by this section. *Hoffman* v. *Apostolic Works* (D. C. Mun. App. 1945, 43 A. 2d 848).

In action by purchaser of leased rooming house for possession thereof for her own residence purposes after expiration of one-year lease under which tenant was holding over as tenant by sufferance, testimony concerning price paid for rooming house business by tenant and amount thereof she had recouped was properly excluded as having no bearing on question of plaintiff's good faith, legality of notice of termination of tenancy, or any other

question. *Arsenault* v. *Angle* (D. C. Mun. App. 1945, 43 A. 2d 709).

Evidence of ill will toward a tenant is properly received in evidence in determining whether landlord seeks possession in good faith, within meaning of subsection (b) (2) of this section, or whether his dominant purpose is to rid himself of a tenant he considers undesirable. *Staves* v. *Johnson* (D.C. Mun. App. 1946, 44 A. 2d 870).

Evidence tending to show animosity toward tenant and her children and a desire that they leave the property was sufficient to sustain trial court's finding of lack of good faith of landlord in attempting to recover possession of leased premises allegedly for his personal use, so as to justify denial of possession to landlord under subsection (b) (2) of this section. *Id.*

Under subsection (b) (2) of this section, good faith is ordinarily a question of fact, and finding of good faith or lack thereof when supported by substantial evidence will not be disturbed. *Black* v. *Tamamian* (D. C. Mun. App. 1946, 49 A. 2d 547).

Where prior judgment had determined that landlord did not seek possession of housing accommodation in good faith under subsection (b) (2) of this section, evidence of new facts arising since prior suit concerning mainly health of landlord's wife and increasingly injurious effect on her health of lack of adequate and comfortable sleeping quarters sustained finding that possession in subsequent action was sought by landlord in good faith for his immediate personal use and occupancy. *Id.*

Evidence authorized finding that landlord required premises for his own use and occupancy within provisions of this section and was entitled to possession. *Craig* v. *Heil* (D. C. Mun. App. 1946, 47 A. 2d 871).

The fact that a house is not available for occupancy as a family residence until extensive alterations and repairs are completed is a matter of evidence to be considered, along with other evidence, in determining the good faith of an owner seeking possession. *Brauer* v. *O'Daniel* (D. C. Mun. App. 1946, 47 A. 2d 89).

In action by owner against occupant to recover possession of a four-story, 14-unit, walkup apartment building, which owner had allegedly purchased for use as a residence, evidence that, though some apartments in building had been vacant for several months, owner had made no attempt to rent them out, was an element properly considered by the jury as indicative of owner's state of mind, in determining the question of his good faith. *Id.*

In landlord's suit to recover possession of house, complaint describing defendant as a tenant at sufferance and evidence showing that he was a tenant by the month did not disclose a fatal variance. *Gordon* v. *Tino* (D. C. Mun. App. 1947, 50 A. 2d 593).

In landlord's action to recover rent on basis of ceiling fixed by Rent Administrator, trial court should have admitted evidence of lease which provided for lower monthly rental and which gave lessee option to extend lease upon same terms for two year period, and copy of a letter exercising renewal option, and determined whether alleged original lease was valid and whether option to extend had been validly exercised. *Hildebrand* v. *Nee* (D. C. Mun. App. 1947, 54 A. 2d 640).

In action for possession of premises for personal use of landlord court properly refused to permit tenant to show ownership of premises in some one else where it was alleged and undisputed that the plaintiff was landlord and that the defendant was plaintiff's tenant. *Mancuso* v. *Santucci* (D. C. Mun. App. 1948, 60 A. 2d 697).

In action by landlord to recover possession of premises for personal use evidence as to whether the landlord would rent to tenant the house next door which landlord owned and which was vacant was properly excluded as irrelevant. *Id.*

Evidence was insufficient to show that former owners and their son to whom dwelling house was conveyed were engaged in conspiracy to evict tenant which would prevent son who was purportedly engaged to be married from taking possession for his own occupancy. *Resnick* v. *Hammond* (D. C. Mun. App. 1948, 61 A. 2d 495).

Evidence sustained finding that owner of apartment in co-operative building sought possession of apartment in good faith for personal use. *Hicks* v. *Bigelow* (D. C. Mun. App. 1948, 55 A. 2d 924).

Evidence entitled purchaser of the perpetual use and equity contract to the rights of a landlord within the Rent Act when the substantial nature of these rights, rather than the form of the transaction, is considered. *Abbot* v. *Bralove* (D.C.D.C. 1949, 81 F. Supp. 532, affirmed 176 F. 2d 64, 85 U.S. App. D.C. 189).

Where landlord sued for possession, the situation disclosed a genuine issue as to whether landlord sought the premises in good faith for immediate personal use and was a material factual issue. The court must disregard the tenants' affidavits which were based on information and belief and did not conform to the rules. *Dewey* v. *Clark* (1950, 180 F. 2d 766, 86 U.S. App. D.C. 137).

The trial court, on timely motion of the tenant, should have taken evidence on the question of whether the tenant voluntarily surrendered possession of the premises and if it held that the surrender was not voluntary but resulted from the previous judgment or from actions of the landlord based thereon, the court should have ordered restitution of their premises to the tenant. *Quick* v. *Paregol* (D. C. Mun. App. 1949, 68 A. 2d 211).

Even though the evidence complained of may not have been admissible on other grounds, it was clearly admissible in support of the counterclaim on the question as to whether there had been an evasion of the Rent Act. *White* v. *Allen* (D.C. Mun. App. 1950, 70 A. 2d 252).

Examination of witnesses

Where landlord sought possession of a dwelling house in order to demolish a building and erect an apartment building thereon, denying cross-examination of plaintiff as to whether she had materials available and subcontracts arranged for the construction of the proposed apartment building in order to shed light on the issue of plaintiff's good faith, was error. *Tatum* v. *Townsend* (D. C. Mun. App. 1948, 61 A. 2d 478).

Forcible entry and detainer

Subsection (b) of this section, prohibiting suit for possession by landlord except for specified reasons, is inapplicable to forcible entry and detainer action. *Brooks* v. *Trigg* (D. C. Mun. App. 1947, 51 A. 2d 302).

Furnished premises

Where tenant rents unfurnished premises at ceiling price and rents furniture from a third person in a bona fide arrangement which is not designed to evade section 45–1601 et seq., landlord would have a valid defense against a claim of violation of the rent act. *Fulton R. Gordon, Inc.* v. *Schram* (D. C. Mun. App. 1945, 44 A. 2d 662).

Landlord whose rent ceiling is fixed on basis of unfurnished rental cannot evade regulation against increase in rent without prior approval of Rent Administrator by renting property furnished. *Id.*

Good faith

This section, permitting landlord to obtain possession of housing accommodation if landlord seeks in good faith to recover possession for immediate purpose of discontinuing housing use and occupancy for a continuous period of not less than six months, was enacted for benefit of landlords, and enables a landlord to obtain possession if, for any reason, he is in good faith willing to discontinue housing use and occupancy for required period, with good faith being dependent on his willingness, intention and purpose to discontinue use for required period. *Beckwith* v. *Klein* (D.C. Mun. App. 1953, 93 A. 2d 283).

"Good faith" in respect of landlord desiring possession of premises in good faith for his own personal occupancy means that the landlord honestly intends to actually occupy the premises and that the occupancy for his own use is his primary motive. *Dant* v. *Forsythe* (D. C. Mun. App. 1951, 81 A. 2d 84).

In examining question of good faith of landlord seeking possession of house for her own use as dwelling, all circumstances should be considered which will shed light upon whether proper case for possession has been established, and among these circumstances is state of mind, intent and purpose of landlord. *Kelley* v. *Potomac Development Corp.* (D. C. Mun. App. 1951, 81 A. 2d 81).

Motive of landlord in seeking possession from tenant not motive of landlord's predecessors in title, is at issue when tenant challenges good faith of landlord in seeking

possession for her own use as dwelling, unless there is convincing evidence of collusion or subterfuge. *Id.*

Issue of good faith of landlord seeking to recover possession of leased premises for immediate purpose of substantially altering and remodeling property within Rent Law lies particularly within province of triers of fact. *Conrad* v. *Pisner* (D. C. Mun. App. 1951, 79 A. 2d 780).

The fact that owners suing to recover possession of residential property under this chapter desired their married daughter and her two children to live with them, and that if they found rooms available after they took possession they would rent such rooms to others, did not impugn their "good faith." *Klein* v. *Fields* (D.C. Mun. App. 1943, 32 A. 2d 398).

Under this chapter, in determining question of landlord's "good faith" in seeking possession of premises, state of mind, intent, and purposes of landlord as reflected in the evidence may be considered. *Gould* v. *Butler* (D.C. Mun. App. 1943, 31 A. 2d 867).

In examining question of good faith of landlord in seeking possession of premises under this chapter all circumstances should be considered which will shed light on whether a proper case for possession has been established. *Id.*

Evidence supported finding that owners of dwelling house were acting in good faith in filing proceeding under this chapter to gain possession of dwelling for their immediate personal use and as a dwelling. *De Bobula* v. *Coppedge* (D.C. Mun. App. 1945, 40 A. 2d 255).

Where substantial evidence supported finding that owners of leased premises, suing for possession, were seeking to occupy their own property as a dwelling, owners' good faith as affecting their rights under this section was an issue of fact for trial judge. *Heindrich* v. *Dimas-Aruti* (D. C. Mun. App. 1945, 42 A. 2d 138).

Purchaser of residential property having established that he sought possession in good faith for his personal occupancy as a dwelling, was entitled to recover possession from vendor's tenant who had received the notice of termination of lease provided for therein. *Mason* v. *Curro* (D. C. Mun. App. 1945, 41 A. 2d 164).

"Good faith", within subsection (b) (2) of this section, means generally that the landlord honestly intends to actually occupy the premises, that occupancy for his own use is primary motive, and that he is not guided by an ulterior motive to evade or defeat the purposes of this chapter. *Staves* v. *Johnson* (D.C. Mun. App. 1946, 44 A. 2d 870).

"Good faith", within subsection (b) (2) of this section, does not exist if the landlord's dominant purpose is to evict the tenant. *McSweeney* v. *Wilson* (D. C. Mun. App. 1946, 48 A. 2d 469).

In landlord's suit to recover possession of house, whether landlords in good faith desired to obtain possession of house for personal use as a dwelling was a question for jury. *Gordon* v. *Tino* (D.C. Mun. App. 1947, 50 A. 2d 593).

This chapter does not undertake to regulate profits on the sale of property, and fact that co-operative group had paid a large profit on the purchase of building had no bearing on personal good faith of the purchaser of a co-operative apartment in seeking to evict a tenant in possession in order to obtain apartment for personal occupancy. *Hicks* v. *Bigelow* (D. C. Mun. App. 1948, 55 A. 2d 924).

The fact that cooperative apartment plans may have the incidental effect of ousting present tenants by sufferance is not evidence of bad faith on the part of the purchasers of individual apartments, nor can such effect be, per se, construed as evidence of an intentional evasion of the Rent Act. *Abbot* v. *Bralove* (D.C.D.C. 1949, 81 F. Supp. 532, affirmed 176 F. 2d 64, 85 U.S. App. D.C. 189).

In a suit for possession for immediate and personal use, the crucial issue whether landlord seeks possession in good faith is an extraordinary issue of fact since it involves the state of mind or motives rather than the ascertainment of a fact in the ordinary sense. *Dewey* v. *Clark* (1950, 180 F. 2d 766, 86 U.S. App. D.C. 137).

In a suit for possession, the presence of the question of good faith as a crucial issue should cause the court to hesitate more than ordinarily before concluding that it is in a position to deny a trial. *Id.*

Immediate and personal use

The word "immediate", as used in this chapter permitting landlord to obtain possession in good faith for his immediate and personal use and occupancy as a dwelling need not always mean desperate. *Gould* v. *Butler* (D.C.D.C. 1943, 31 A. 2d 867).

Where landlord, suing hold-over tenant at sufferance for possession of leased property used as rooming house, did not say that he required property for his immediate personal use and occupancy as dwelling, but said that he proposed to continue operation thereof as rooming house, trial judge properly refused to oust tenant. *Lingo* v. *Wolfe* (D. C. Mun. App. 1944, 37 A. 2d 270).

An intent to use part of residence as a dental office or to rent parts to roomers does not negative honest purpose to use and occupy premises as owner's dwelling as ground for dispossessing tenants, notwithstanding this section. *Heindrich* v. *Dimas-Aruti* (D. C. Mun. App. 1945. 42 A. 2d 138).

In suit by owner against occupant to recover possession of a four-story, 14-unit, walkup apartment building which owner allegedly purchased for use as a residence, evidence justified finding that need of owner was bona fide and immediate, within meaning of subsection (b) (2, 4) of this section. *Brauer* v. *O'Daniel* (D. C. Mun. App. 1946, 47 A. 2d 89).

Prohibitions of this section provide protection for tenants by preventing their arbitrary ouster during the critical housing shortage, but this section containing the prohibitions does not ignore the rights of an owner who brings himself within provisions of this section and shows a real, immediate need for his own property. *Id.*

A landlord could not maintain a suit to recover possession of a dwelling house on the ground that she desired possession for her immediate and personal use, where she did not become owner of the premises and did not become landlord until nearly a month after filing of the original complaint, notwithstanding she was equitable owner when the original complaint was filed. *Dewey* v. *Clark* (D.C. Mun. App. 1948, 61 A. 2d 475, reversed on other grounds 180 F. 2d 766, 86 U.S. App. D.C. 137). See, also, *Thompson* v. *Clark* (D.C. Mun. App. 1948, 61 A. 2d 477, reversed on other grounds 180 F. 2d 766, 86 U.S. App. D.C. 137).

Where landlord, suffering from an incurable disease, sued for possession of another apartment in the same building for the use of her personal nurse whom she needed close by to minister to her in her illness, she is entitled to possession even though apartment is not to be actually occupied by landlord. *Manogue* v. *Heilbroner* (D. C. Mun. App. 1949, 63 A. 2d 876).

Improvements

Where tenant of a row house, shortly before expiration of five-year lease, made improvements on the property at a cost of more than $200, but the only improvement landlord was cognizant of was the painting of front porch by tenant, such repairs were not sufficient to have bound tenant for a renewal term of five years, and hence did not constitute notice to landlord that tenant was exercising option contained in lease to renew for a five-year period, and landlord was at liberty, after expiration of lease, to terminate the tenancy and recover possession for landlord's personal occupancy. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

Inapplicable to United States

This chapter does not apply to government-owned, defense housing in the District. *United States* v. *Wittek* (1949, 69 S. Ct. 1108, 337 U.S. 346, 93 L. Ed. 1406).

Inspection of premises

Where tenant's possession depends upon this chapter, landlord has right to reasonable inspection of premises in order to determine whether remodeling or alteration is desirable or necessary and, if so, what form it will take; and likewise landlord has right to make such repairs as are necessary to protect his property from waste and deterioration and, for such purpose, is entitled to enter premises at reasonable times to inspect and to make repairs. *Dunnington* v. *Thomas E. Jarrell Co.* (D.C. Mun. App. 1953, 96 A. 2d 274).

The refusal of tenant whose possession depends upon this chapter to permit landlord to enter premises at reasonable times to inspect and to make such repairs as

are necessary to protect property from waste and deterioration would not constitute a "nuisance" but would be a violation of implied obligation of tenancy. *Id.*

Lease, validity of

A landlord cannot by lease or other contract raise the rent ceiling previously established nor avoid the effect of it. *Morning Star Lodge No. 40* v. *Harris* (D. C. Mun. App. 1953, 93 A. 2d 288).

Under statute providing that any building occupied or offered for occupancy by five or more roomers was decontrolled, premises rented or offered for rental by tenant to no more than four persons or roomers were not decontrolled and therefore lease entered into under the mistaken assumption that decontrol had taken place was ineffective. *Jess Fisher & Co.* v. *Hicks* (D. C. Mun. App. 1952, 86 A. 2d 177).

Rent Act is primarily concerned with protecting a tenant's right to possession so long as he pays rent and does not violate obligations of tenancy, and in maintaining rent ceilings and required standards. The Act provides means for enforcing these purposes, but to declare a lease made in violation of a general order void in its entirety and to hold that landlord has no rights under it would add a new penalty not provided by the act. *Amos* v. *Cummings* (D. C. Mun. App. 1949, 67 A. 2d 87).

Lease violations

A tenant may not create new tenancy by removing from leased property and placing it completely in charge of sublessees in violation of terms of lease, as this chapter protects only actual tenants, not mere middlemen. *Hall* v. *Henry J. Robb, Inc.* (D.C. Mun. App. 1943, 32 A. 2d 707).

A tenant's removal from leased property and subletting thereof in its entirety was breach of lease prohibiting subletting in whole or part, though lease had expired and tenant was holding over, so that landlord was entitled to recover possession of property. *Id.*

Where tenants brought their dogs into building after effective date of this chapter, right to keep dogs on leased premises was neither a "privilege" nor a "facility" within this chapter, and therefore this chapter did not preclude landlord from exercising right under lease to revoke permission to keep dogs. *Mee* v. *Marlyn Apartment Co.* (D.C. Mun. App. 1943, 31 A. 2d 864).

Where lease expressly limited use of premises to use as a dwelling only, its use as a dwelling and for dressmaking without objection from landlords over a long period prior to enactment of this chapter, which was limited in its scope to property rented for living or dwelling purposes, neither took the premises out of the scope of this chapter, nor constituted a violation of her tenancy. *Carow* v. *Bishop* (D.C. Mun. App. 1947, 50 A. 2d 598).

A tenant who permitted some of her immediate family to live in leased premises and who had kept roomers, but who never removed furniture from leased premises and who was there daily and had access to all rooms, although she had purchased another house, did not thereby violate rental agreement prohibiting subletting. *Simmons* v. *Weinsoff* (D. C. Mun. App. 1948, 58 A. 2d 497).

Malicious prosecution

Complaint alleging that after rent had been reduced to comply with this chapter, four suits had been instituted against plaintiff by or on behalf of defendants to recover possession of house and that all four suits were brought maliciously without just cause and in bad faith, stated a claim on which relief might be granted. *Soffos* v. *Eaton* (1946, 152 F. 2d 682, 80 U.S. App. D.C. 306).

A complaint which alleged that tenant left leased premises as result of stipulation signed by himself and his attorney and in compliance with resulting judgment in landlord's action under this chapter to secure possession, and which further alleged that landlord's statement in regard to his intention to immediately occupy designated premises as a dwelling were fraudulent, could not be upheld as stating a cause of action for "malicious prosecution," where it appeared that the action upon which suit was based terminated in landlord's favor. *Simpkins* v. *Brooks* (D. C. Mun. App. 1946, 49 A. 2d 549).

Mandatory injunction

In suit for mandatory injunction requiring defendants to restore possession of an apartment, record supported findings that plaintiffs had breached obligation under verbal understanding pursuant to which they took possession, that defendants had given written notice to quit, and that defendants sought in good faith to recover possession of property for immediate and personal use as a dwelling. *Leonardo* v. *Leonardo* (1945, 145 F. 2d 849, 79 U.S. App. D. C. 258).

New housing

A landlord applying for increase of established rent ceiling on ground of increase in operating cost and peculiar circumstances could not for the first time in action for overcharges assert that increase in rent was justified on ground of new housing accommodation. *Morning Star Lodge No. 40* v. *Harris* (D. C. Mun. App. 1953, 93 A. 2d 288).

Congress, in passing this chapter, did not intend that an owner could regain possession only when he proposed to erect a new building, and therefore where landlord planned to raze demised building for parking lot project costing about $8,000, landlord was entitled to possession under such act. *Ancher* v. *Lamb* (D.C. Mun. App. 1952, 86 A. 2d 533).

Notice to quit

Notice to quit was waived by landlord's subsequent continuous acceptance of rent from statutory tenant. *Dunnington* v. *Thomas E. Jarrell Co.* (D. C. Mun. App. 1953, 96 A. 2d 274).

Notice to quit, served on tenant at sufferance who had sublet premises for definite period with landlord's consent on ground that tenant was violating obligation of tenancy within this section three weeks before any such alleged violation occurred, was premature, and had no anticipatory effect to reach future violations. *Westchester Apartments* v. *Keroes* (D.C. Mun. App. 1943, 32 A. 2d 869).

In landlord's action to recover premises for his own use, defenses that court had no jurisdiction because landlord had served no notice to quit and that tenant's waiver of such notice had been conditioned upon ability to find new quarters which she failed to do, could have been raised at trial, and when advanced respectively on motion to quash writ of restitution and on motion for indefinite stay of execution, were too late. *Morris* v. *Breaker* (D. C. Mun. App. 1944, 38 A. 2d 632).

Where tenant held over after expiration of lease and landlord desired premises for personal occupancy, 30-day notice to vacate was sufficient to terminate the tenancy notwithstanding that notice did not specify any one of the several grounds which, under this section, are made conditions to the right of a landlord to regain possession of residential property. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

This section does not require that tenant be given a notice stating grounds upon which landlord claims right to possession before an action for possession is instituted. *Id.*

Where one-year lease unambiguously gave lessor or his assignee right to terminate lease if property was sold during term of lease by giving lessee 90 days' notice, refusal to admit testimony to explain terms of lease, in action by purchaser of premises for possession thereof, to show that lessee was entitled to 90 days' notice to vacate where he held over after expiration of one year's tenancy and continued to pay rent, was not error. *Arsenault* v. *Angle* (D. C. Mun. App. 1945, 43 A. 2d 709).

A roomer if he had failed to pay rent was not entitled to protection of this chapter and could be evicted without notice. *Tamamian* v. *Gabbard* (D. C. Mun. App. 1947, 55 A. 2d 513).

Notice to quit rented premises was not ineffective because served upon only one tenant the other being in a foreign country, where defendants not only were cotenants of the property but also partners in a rooming house venture conducted thereon. *Tatum* v. *Townsend* (D. C. Mun. App. 1948, 61 A. 2d 478).

Notice to quit rented premises was not ineffective because served upon only one tenant the other tenant being in a foreign country, where the evidence indicated that the notice reached the wife of the other tenant, who was also his attorney in fact. *Id.*

Nuisance

Where the complaint charged specifically that defendant was creating a nuisance by permitting a fire hazard in that she permitted the gas range to remain lighted

during absence from premises, it was improper to consider in proof of the nuisance charge, the several incidents of burning of food which occurred while she was present in the apartment. *Reese* v. *Wells* (D. C. Mun. App. 1950, 73 A. 2d 899).

Ordinary wear and tear

Where it was determined that the premises were housing accommodations under this chapter and there was no covenant regarding repairs, landlord could not recover for repairs due to ordinary wear and tear. *Friedman* v. *Sherman* (D. C. Mun. App. 1950, 74 A. 2d 57).

Persons entitled to sue

Although caption of complaint designated plaintiff as agent, plaintiff could maintain suit against tenant for possession of demised premises, in view of facts that lease between the parties described lessor in same words, and that during course of trial plaintiff was granted leave to amend to conform with proof to show that plaintiff was not only lessor but also agent of designated principal. *Ancher* v. *Lamb* (D. C. Mun. App. 1952, 86 A. 2d 533).

Where testator devised an apartment building in trust to three trustees, including testator's daughter, to manage the apartment building and pay one half of net income to testator's daughter, and after testator's death, daughter and *her* brother occupied apartments in the building rent free, the daughter could not, in her individual capacity, maintain an action under the rent act against a tenant in possession to recover possession of an apartment on ground that she required it for her personal use for a dwelling, since she was not a "landlord" within this chapter. *Thomas* v. *Williams* (D. C. Mun. App. 1952, 84 A. 2d 702).

Husband was entitled to maintain in his own name a suit against tenant for possession of an apartment in a building which he and his wife had purchased as tenants by the entirety. *Sandler* v. *Wertlieb* (D. C. Mun. App. 1948, 60 A. 2d 222).

Pleading

Where complaint in action under this chapter stated only that landlord's rental agent failed to provide minimum service in violation of standards fixed by rent administrator, and neither claimed nor showed any other basis for liability, and neither Rent Act nor lease agreement imposed such duty on agent, under no stated facts which could be proved in support of tenant's claim would tenant be entitled to relief, and summary judgment for agent was properly granted. *Reyman* v. *Edward H. Jones & Co.* (D.C. Mun. App. 1953, 96 A. 2d 42).

Plaintiff's allegation in complaint to obtain possession of apartment for personal occupancy that defendant held the property as plaintiff's tenant at sufferance, coupled with other allegations, was sufficient to entitle plaintiff to trial on issue whether she was landlord. *Williams* v. *Thomas* (D.C. Mun. App. 1951, 79 A. 2d 783).

In action by landlords, who were husband and wife, to obtain possession of housing accommodations from tenants, where the landlords held the property as tenants by the entirety, verification of complaint by husband only was sufficient. *Wynn* v. *Washington* (D. C. Mun. App. 1947, 53 A. 2d 275).

A complaint by landlord for possession of apartment alleging that tenants had refused to allow landlord to rent part of apartment to a suitable person in accordance with their agreement and with order of Rent Control Administrator stated a cause of action. *Block* v. *Wilson* (D.C. Mun. App. 1947, 54 A. 2d 646). See, also, *Thompson* v. *Clark* (D.C. Mun. App. 1948, 61 A. 2d 477, reversed on other grounds 180 F. 2d 766, 86 U.S. App. D.C. 137); *Dewey* v. *Clark* (D. C. Mun. App. 1948, 61 A. 2d 475).

Informality of pleadings is the rule in landlord and tenant cases, but the court has never said that a suing landlord may allege one thing, and, over objection, prove another. *Reese* v. *Wells* (D. C. Mun. App. 1950, 73 A. 2d 899).

Possession, right to

Where former tenant entered into a contract for the purchase of an apartment, but contract was void because former tenant thought apartment consisted of two bedrooms, as apartment then existed but landlord intended only to sell one bedroom as part of apartment, party who purchased adjoining apartment, which included disputed bedroom, was entitled to recover its possession for his immediate personal use and occupancy. *Zlotnick* v. *Crisp et al.* (1951, 185 F. 2d 502, 87 U. S. App. D. C. 339).

Where owner of rooming house occupied by tenant was faced with possibility of having to lease son-in-law's home because of son-in-law's inability on Army pay to continue her support, it was not necessary that owner wait until actually forced to leave before seeking to obtain possession of rooming house as a means of providing shelter and a living. *Downs* v. *Karsh* (D.C. Mun. App. 1943, 33 A. 2d 620).

This chapter does not deprive an owner of right to occupy his own property in possession of tenants if occupancy is sought in good faith and is not for purpose of evading or defeating purposes of this chapter. *Id.*

Where tenant at sufferance twice sublet apartment for definite terms with express consent of landlord and landlord after it had knowledge that persons in addition to second sublessee were occupying apartment expressly consented that second sublease continue to its expiration date, and accepted rent throughout remaining period of sublease landlord had no right to demand possession because of anything which had occurred prior to expiration date of second sublease on ground that tenant was violating "obligation of tenancy" within this section. *Westchester Apartments* v. *Keroes* (D.C. Mun. App. 1943, 32 A. 2d 869).

In testing landlord's right to possession under this chapter permitting landlord to obtain possession for immediate and personal use, the spirit as well as the letter of the law should be considered and flimsy showing should not form basis for ousting tenant. *Gould* v. *Butler* (D.C. Mun. App. 1943, 31 A. 2d 867).

Where landlord sought possession of premises for his immediate and personal use as dwelling within this chapter, the fact that surrender of premises to landlord would result in ousting eight roomers who had rented from tenant and were not parties to action did not deprive landlord of right to possession. *Id.*

The fact that landlord worked in Alexandria, Va., did not deprive him of protective purview of this chapter which permits landlord in good faith to recover possession of property for his immediate and personal use and occupancy as a dwelling. *Id.*

Purchaser of residential property in order to obtain possession thereof as against vendor's tenant was required to establish his claim under exception in this section prohibiting maintenance of action for possession of housing accommodations against a tenant. *Mason* v. *Curro* (D. C. Mun. App. 1945, 41 A. 2d 164).

Where there was no evidence to contradict landlord's good faith or her need of dwelling house for her own personal use and occupancy as a dwelling, she was entitled to possession under this section for her immediate and personal use and occupancy as a dwelling. *Olessoff* v. *Osbourn* (D. C. Mun. App. 1946, 47 A. 2d 514).

The fact that landlord's sister and brother-in-law who proposed to move in with landlord had lived in their present quarters for 20 years, did not preclude landlord from recovering possession of house under this section for her immediate and personal use and occupancy as a dwelling. *Id.*

Where it is established that the sale of residence is made in good faith and the purchase is made for immediate personal use and occupancy as a dwelling, the right to recover possession against tenant under subsection (b) (3) of this section is not affected by fact that the purchaser contracted not directly with the legal owner but with one who contracted to buy from the legal owner, nor by fact that the sale was for a profit. *Knowles* v. *Mosher* (D. C. Mun. App. 1946, 45 A. 2d 755).

Subsection (b) of this section, although prohibiting dispossession of tenant continuing to pay rent, does not preclude dispossession of tenant who fails to pay rent. *Tamamian* v. *Gabbard* (D. C. Mun. App. 1947, 55 A. 2d 513).

Where in suit for possession of property purchased at foreclosure sale, defendant had previously owned the property but had defaulted on the second trust note, the defense that when the deed of trust was foreclosed, defendants automatically became tenants at will under § 45–822 and could not be ousted by reason of § 45–1605 is not applicable since the property does not constitute housing accommodations within the meaning of

§ 45–1611. *Suratt* v. *Real Estate Exchange, Inc.* (D. C. Mun. App. 1950, 76 A. 2d 587).

Contracts, where possible, are to be given their ordinary meaning. Tenants who purchased stock in a hotel operated on a semi-cooperative basis gained no estate in the land. *Beck* v. *Bechtel Hotel* (D. C. Mun. App. 1950, 72 A. 2d 36).

Landlord's claim that she could not be required to restore the premises to tenant because she had spent money in improvements and had installed other tenants in the accommodations is without merit, since the improvements were made and premises rented to other tenants during the pendency of an appeal from a judgment in her favor. *Quick* v. *Paregol* (D. C. Mun. App. 1949, 68 A. 2d 211).

Possession on the grounds of substantially altering or remodeling the property may be gained by the landlord only after the plans for remodeling have been approved and after suit has been filed in the court. *Id.*

Landlord's contention that restitution will not be ordered after the tenant's term has expired is without merit, since it ignores the effect of the Act which gives tenants the right to continued occupancy of the housing accommodations so long as rent control continues and so long as they pay their rent and comply with the terms of the tenancy. *Id.*

Presumptions

Where lack of good faith of landlord who sought to recover possession of housing accommodations for personal occupancy as a dwelling under subsection (b) (2) of this section had been established in prior suit, presumption was, in absence of evidence to contrary, that such lack continued to exist, especially in view of comparatively short time elapsing between the two suits, and landlord was required to produce evidence of new facts and changed situation to overcome previously established fact of absence of good faith and presumption of its continuance. *Black* v. *Tamamian* (D. C. Mun. App. 1946, 49 A. 2d 547).

Prior judgment as bar

Action by owners for possession of residential property under this chapter, on ground that they desired possession for their immediate use as a dwelling, was not barred by prior judgment for defendant in action between same parties, where transcript showed that, when prior judgment was introduced in evidence, owners' attorney stated without contradiction that findings for defendant were based on fact that 30-day notice to quit required by § 45–904 to be served on tenant to terminate tenancy had been invalidated by acceptance of rent by owners' rental agent for a period extending beyond expiration date of notice, and present action was brought after expiration date of the second notice. *Klein* v. *Fields* (D.C. Mun. App. 1943, 32 A. 2d 398).

Landlord was not entitled to possession because of allegedly unlawful use of leased premises by tenant where law was so modified while action for possession was pending that use complained of was no longer unlawful and such use had not injured physical property, estate or purse of landlord and was the very use contemplated under original letting. *Cosby* v. *Shoemaker* (D. C. Mun. App. 1943, 34 A. 2d 27).

Premises used for dwelling purposes were subject to this chapter and landlord could not recover possession except by establishing violation by tenant of provisions of this chapter. *Id.*

If complaint which alleged that tenant left leased premises as result of stipulation signed by himself and his attorney and in compliance with resulting judgment in landlord's action under this chapter to secure possession, and which further alleged that landlord's statement in the action in regard to his intention to immediately use designated premises as a dwelling were false, were construed as an attack on the judgment in the landlord and tenant proceeding, the complaint was a collateral attack on the judgment and did not state a cause of action. *Simpkins* v. *Brooks* (D.C. Mun. App. 1946, 49 A. 2d 549). See, also, *Resnick* v. *Hammond* (D.C. Mun. App. 1948, 61 A. 2d 495).

Proceeding to recover possession

In landlord's action to recover possession of apartment, where judgment for possession was entered December 2, 1941, with stay of execution until January 31, 1942, pursuant to stipulation of parties, and tenant paid rent for December and January, landlord's direction to clerk in March, 1942, to issue writ of restitution for possession constituted the "maintaining of a proceeding" against a "tenant in possession" of "housing accommodations" within this chapter, and therefore writ of restitution was improperly granted in absence of compliance with this chapter. *Myers* v. *H. L. Rust Co.* (1943, 134 F. 2d 417, 77 U.S. App. D. C. 218).

Where amount of rent overcharges was more than sufficient to offset the rent due the landlord, the landlord's claim for possession of premises from tenant was properly denied. *Morning Star Lodge No. 40* v. *Harris* (D. C. Mun. App. 1953, 93 A. 2d 288).

Where writ of restitution obtained by landlords against tenant expired, but tenant left the premises because of threats that other writs would be obtained and that she would be forcibly evicted, eviction did not constitute a wrongful eviction, even though landlords never occupied the property for their immediate and personal use and occupancy as dwelling house, but instead immediately after tenant had vacated, sold it to others. *Smith* v. *Bozzi* (D. C. Mun. App. 1951, 83 A. 2d 436).

Under this section, the procedure in landlord's action against tenant for possession of premises, except for restrictions as to grounds upon which landlord may claim right of possession, remains the same as it was previously. *Warthen* v. *Lamas* (D. C. Mun. App. 1945, 43 A. 2d 759).

The effect of this section restricting landlord's right to recover possession of housing accommodations is to create a noncontractual statutory right of possession in tenant, continuing at his option beyond expiration of his lease or rental agreement by depriving landlord, unless he claims under one of the permitted grounds, of right to maintain an action for possession. *Id.*

In proceeding in landlord and tenant court, where informality of pleading has always been the rule, to recover demised premises on the sole ground that tenancy had been terminated by notice failure of complaint to show that premises were exempt from this chapter did not require dismissal. *United States* v. *Wittek* (D.C. Mun. App. 1946, 48 A. 2d 805, reversed and remanded on other grounds 171 F. 2d 8, 83 U.S. App. D.C. 337, reversed and remanded on other grounds 69 S. Ct. 1108, 337 U.S. 346, 93 L. Ed. 1406).

Where complaint alleged termination of tenancy by notice and sought recovery of demised premises, even if premises were housing accommodations governed by this chapter, it was still possible that plaintiff could have stated a cause of action by alleging that tenants had violated a condition of their tenancy, and proper procedure was to grant motion to dismiss with leave to amend. *Id.*

Rent Act does not require that the person suing for possession be the owner of a fee simple title. It is sufficient if the plantiff be the landlord. *Glennon* v. *Butler* (D. C. Mun. App. 1949, 66 A. 2d 519).

A landlord may recover possession of his property when occupancy is sought in good faith and not to evade or defeat the purpose of the Act, even though it is shown that he will not require the whole thereof as a personal dwelling but only when there has been a full disclosure of this information at the trial. *Frankfurt* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 197).

Where housing development was originally built by the United States and later sold to a veteran's co-operative housing association, and a member thereof sued for possession of an individual apartment for personal use, decision does not turn on whether appellant is a landlord, but rather upon the legal effect of a series of contracts and transfers of title affecting the project as a whole and the individual apartment involved. Appellant's argument that the agreement to extend appellee's lease until the end of rent control was made without consideration to him and therefor void is unfounded because, if consideration exists, it is not necessary that it run to the person seeking to enforce the agreement. *Owens* v. *Liff* (D. C. Mun. App. 1949, 65 A 2d 921).

Purpose

The purpose of subsection (b) of this section was to protect tenant's possession and not to give to tenant

means of effective subletting which tenant did not previously have. *Keroes* v. *Westchester Apartment* (D. C. Mun. App. 1944, 36 A. 2d 263).

Subsection (b) (3) of this section permitting landlord to recover possession of premises when he has in good faith contracted to sell the property for immediate personal use is to protect tenant from being evicted under a simulated sale. *Knowles* v. *Mosher* (D. C. Mun. App. 1946, 45 A. 2d 755).

Questions of fact

In tenant's suit against landlords to recover for certain alleged rental overcharges, whether landlords acted in good faith in collecting alleged above ceiling rental was properly submitted to jury. *Parker* v. *Williams* (D. C. Mun. App. 1951, 81 A. 2d 653).

When there is substantial evidence challenging good faith of landlord in accepting alleged over ceiling rent, a question of fact is raised for determination by jury or trial court. *Id.*

In action by landlord to recover possession of leased premises on ground that he has in good faith contracted to sell property for immediate and personal use and occupancy by purchaser, good faith is usually question of fact and in testing good faith of suing landlord all circumstances should be considered. *Sigmond* v. *Kern* (D. C. Mun. App. 1951, 78 A. 2d 236).

When there is substantial evidence challenging good faith of the landlord, in seeking to recover possession of premises allegedly for his own personal use, a question of fact is raised for determination by the jury or trial court. *Staves* v. *Johnson* (D.C. Mun. App. 1946, 44 A. 2d 870).

Where there is substantial evidence challenging the good faith of a landlord seeking to recover possession of a house under this section, a question of fact is raised for determination by the jury or trial court. *Olessoff* v. *Osbourn* (D.C. Mun. App. 1946, 47 A. 2d 514).

The question whether the housing accommodations involved are new ones not rented on the critical date, or are old ones with substantial capital improvements or alterations, is a question of fact. Such a question must, unless evidence is compelling one way or the other, be decided by the jury. *Martin* v. *Schlein* (D. C. Mun. App. 1950, 71 A. 2d 614).

Redress for dispossession

This chapter does not provide any civil remedy to a tenant who has been wrongfully dispossessed, and the wrongful ousting of a tenant under this act does not furnish grounds for an action for wrongful eviction, malicious prosecution or abuse of process. *Smith* v. *Bozzi* (D.C. Mun. App. 1951, 83 A. 2d 436).

Remodeling

In landlord's action to recover leased premises for immediate purpose of substantially altering and remodeling property, where landlord's plans had been filed and approved by commissioners, and he sought to recover possession in good faith, in absence of a showing of complete inability of landlord to remodel under a new order of National Production Authority, his claim for possession could not be defeated on ground that such order would prohibit anticipated construction. *Conrad* v. *Pisner* (D. C. Mun. App. 1951, 79 A. 2d 780).

In suit by landlord to obtain possession of dwelling house from tenant for immediate purpose of making substantial alterations and remodeling, landlord was not required to elect whether work of remodeling would be performed by National Housing Agency or by private builder, with both of whom she had negotiated. *Klein* v. *Hilton* (D. C. Mun. App. 1945, 40 A. 2d 77).

Landlords, who sought to recover possession of premises under subsection (b) (4) of this section for the immediate purpose of substantially altering and remodeling the property and replacing it with new construction, and who offered evidence that plans therefor had been approved by the Commissioners of the District of Columbia were not required to show, additionally, approval of the work by the Civilian Production Administration. *Carow* v. *Bishop* (D. C. Mun. App. 1947, 50 A. 2d 598).

Where landlords seek to recover possession of premises under subsection (a) (4) of this section for immediate purpose of altering and remodeling the property and replacing it with new construction, recovery of possession might be defeated upon showing of complete inability of landlords to remodel because of Civilian Production Administration regulations, but failure to obtain approval of the work by the Administration would not bar the action although the regulations could properly be considered by the court on the question of good faith. *Id.*

Landlord's suit to recover possession of a dwelling house for the purpose of demolishing it and erecting apartment building on the lot was premature, where construction plans had not been approved by the District of Columbia Commissioners as required by subsection (b) (4) of this section at the time the suit was filed and notice of such approval was not given until almost two months later on the day before the trial of the case. *Tatum* v. *Townsend* (D. C. Mun. App. 1948, 61 A. 2d 478).

Residential versus commercial property

Whether property is commercial and therefore free from control, or whether it is partly residential, is ordinarily a question of fact. In determining such an issue, due weight must be given to such factors as whether the parties nave treated the two portions as separate and distinct or as a unit, prior leases, acts of the parties, the time during which the landlord-tenant relationship has existed and the nature and services of the units involved. Such questions should be submitted to the jury. *Bellmore* v. *Baum* (D. C. Mun. App. 1949, 68 A. 2d 588).

Res judicata

Where, in prior action against member-tenant for possession of apartment in a cooperatively owned apartment house, issue of rent overcharge was considered and determined by a court having jurisdiction of the parties and subject matter, such determination would have to be considered a final adjudication and would, so long as judgment in the prior action remained unmodified, be res judicata on issue of overcharge in subsequent action between the same parties for double the overcharge. *Usher* v. *1015 N. Street, N. W. Cooperative Association, etc.* (D. C. Mun. App. 1956, 120 A. 2d 921).

Where, in prior action for possession of apartment in cooperatively owned apartment house for nonpayment of rent, member-tenant's contention that there had been an overcharge of rent was determined adversely to member-tenant, and judgment therein remained unmodified, such judgment, which was res judicata as to cooperative association, was also res judicata as to association's agents, who collected the rent, in subsequent action by member-tenant against association and the agents for double overcharges of rent for the apartment. *Id.*

The dismissal of a prior action for possession of housing accommodations brought almost three years before was not res judicata of question of good faith in landlord's present action. *Williams* v. *Thomas* (D. C. Mun. App. 1951, 79 A. 2d 783).

Judgment of landlord and tenant court in favor of tenant in action by landlord to recover premises for his own use was res judicata in subsequent action in municipal court for same relief. *Scholl* v. *Tibbs* (D. C. Mun. App. 1944, 36 A. 2d 352).

The fact that landlord, in first action to secure housing accommodations for his own use, described defendant as a tenant at will and in second action described defendant as a monthly tenant, did not avoid application of res judicata doctrine, particularly where briefs filed in first action also described defendant as a monthly tenant. *Id.*

Where judgment in first action followed a judicial determination of basic controversy as to whether landlord was entitled to maintain a possessory action against tenant, although no formal trial was held, such judgment was conclusive to same extent as if rendered after a formal trial. *Id.*

An adjudication that landlord in former suit did not seek possession of housing accommodations in good faith for personal occupancy as a dwelling under subsection (b) (2) of this section was not res judicata of question of good faith in landlord's subsequent action under same subsection. *Black* v. *Tamamian* (D. C. Mun. App. 1946, 49 A. 2d 547).

Where tenant's petition for rent refund was dismissed for lack of jurisdiction of relief sought, and Administrator had undertaken to make findings on some of the

questions in controversy, such findings are without effect and are not res judicata in any other proceedings involving the question. *Levy* v. *Arsenault* (D. C. Mun. App. 1949, 62 A. 2d 642).

Right to appeal

Where tenant did not yield possession voluntarily but was forced to vacate by writ of restitution which issued after judgment for landlord seeking possession, the question of right to possession was not moot and tenant did not lose her right to appeal, as she would have had she yielded possession voluntarily. *Ancher* v. *Lamb* (D. C. Mun. App. 1952, 86 A. 2d 533).

Showing premises

Landlord's right under this section to show rented premises for sale must be exercised reasonably and in good faith and cannot be used to harass tenant or unreasonably interfere with his enjoyment of possession. *National Metropolitan Bank of Washington* v. *Judge* (D. C. Mun. App. 1944, 37 A. 2d 446).

Refusal by tenant, whose possession depended wholly on this chapter, to permit landlord to show property for sale at reasonable times, was a violation of an obligation of tenancy which, if persisted in, would authorize order for surrender of premises. *Id.*

Landlord's right to sell, reserved to landlord under subsection (b) (1, 3) of this section, includes right to show premises at reasonable times. *Id.*

Stage of proceedings

Where trial court misinterpreted decision on a former appeal when case was remanded, and reinstated its earlier ruling, such action constituted error. It follows that while the case was pending before the Administrator on such remand and until a new ceiling was fixed, the monthly rental continued to apply. *Acuino* v. *Winthrop* (D. C. Mun. App. 1949, 65 A. 2d 602).

Stay of proceedings

Where judgment of another court first obtaining jurisdiction enjoined owner from conveying property to colored persons and subsequently the judgment was stayed pending an appeal, whereupon the property was bought by colored persons who instituted proceeding against tenant to obtain possession for their own personal use, dismissal of plaintiff's proceedings was error, but the proceedings should have been stayed until disposition of appeal in first case. *Williams* v. *Pearson* (D. C. Mun App. 1946, 49 A. 2d 663).

The Municipal Court for District of Columbia did not have the power, in order to accomplish ends of justice, to temporarily stay execution of judgment in favor of landlords suing tenant for possession of leased housing accommodations. *Conrad* v. *Medina* (D. C. Mun. App. 1946, 47 A. 2d 562).

Subletting

Where § 45–1611 provides that the term "tenant" includes a person entitled to the use of any housing accommodations, but the definitions of said § 45–1611 are expressly limited to "as used in this Act [chapter]", such definitions are controlling for the purposes of this chapter but do not purport to make that a subletting, which was not a subletting prior to this chapter, and hence the taking of roomers does not violate a covenant against "subletting" without landlord's written consent. *Beall* v. *Everson* (D. C. Mun. App. 1943, 34 A. 2d 41).

Where tenant under verbal hiring by the month removed herself from rented apartment and sublet it to another with landlord's consent for a designated period, after expiration of such period, landlord was entitled to possession of the apartment on ground that tenant was violating "obligation of tenancy" within subsection (b) (1) (a) of this section. *Keroes* v. *Westchester Apartments* (D. C. Mun. App. 1944, 36 A. 2d 263).

Tenant by sufferance

Tenancy under verbal hiring by the month, though deemed a tenancy at sufferance by § 45–820 is not an estate at sufferance within strict meaning of the common-law term, but is more in the nature of an estate, from month to month, or an estate at will, and until this section became effective was determinable at any time. *Keroes* v. *Westchester Apartments* (D. C. Mun. App. 1944, 36 A. 2d 263).

A tenant continuing in possession and paying rent under an expired lease becomes a tenant at sufferance and such tenancy is impliedly subject to the provisions of the expired lease. Where with the implied consent of the landlord, the tenant used the major part of the premises for residence purposes, it is clear that the accommodations come within the meaning of the Rent Act. *Friedman* v. *Sherman* (D. C. Mun. App. 1950, 74 A. 2d 57).

Tenant's rescission

This section, prohibiting actions by landlord to recover possession even though tenant has no lease or though his lease has expired, restricts landlord's right to evict tenant and does not apply to actions by tenants for rescission for landlord's violation of this chapter or regulation thereunder. *Friedman* v. *Kennedy* (D. C. Mun. App. 1945, 40 A. 2d 72).

Terms of lease

To require a man and his wife and a child to sign separate rental agreements and use such agreements as a basis for charging a higher rental would constitute an obvious evasion of this chapter as it is entirely clear that the per person rental was not intended to apply to members of a family unit. *Block* v. *Gates* (D. C. Mun. App. 1949, 68 A. 2d 295).

Unlawful eviction

A complaint which alleged that tenant left leased premises as the result of stipulation signed by himself and his attorney and in compliance with the resulting judgment in landlord's action under this chapter to secure possession failed to charge an "unlawful eviction," notwithstanding that it was alleged that landlord's statement in his action in regard to his intention to use premises for his own immediate personal use as a dwelling were fraudulent. *Simpkins* v. *Brooks* (D. C. Mun. App. 1946, 49 A. 2d 549).

If complaint, which alleged that tenant left leased premises as result of stipulation signed by himself and his attorney and in compliance with resulting judgment in landlord's action under this chapter to secure premises for his personal use as a dwelling, was not intended as an attack on the previous judgment, but intended to relate only to events occurring since the judgment, mere allegation that premises were available March 15, and that landlord had not moved in by June 24 did not, without more, show that tenant was fraudulently evicted. *Id.*

Waiver

Whether there was constructive waiver of covenant in lease against subletting by landlord's acceptance of rent must be determined as of date when landlord's action to recover possession of leased property because of such subletting was commenced. *Hall* v. *Henry J. Robb, Inc.* (D.C. Mun. App. 1943, 32 A. 2d 707).

A landlord's acceptance of monthly rent payment three days after commencement of his suit against tenant to recover possession of leased property because of defendant's breach of lease by subletting did not constitute "waiver" of such breach. *Id.*

Where landlord, at time premises were rented, understood that entire premises were to be occupied by a daughter of tenants, but tenants divided premises into apartments which they sublet and landlord, with full knowledge of the subletting, continued to accept monthly rent in advance for four years without making any protest regarding the subletting, landlord waived right to claim that subletting constituted a violation of an obligation of the tenancy so as to secure eviction of tenants under subsection (b) (1) of this section. *Thompson* v. *Gray* (D. C. Mun. App. 1947, 50 A. 2d 594).

§ 45–1606. Administrator.

There is hereby created in and for the District of Columbia the Office of Administrator of Rent Control. The Administrator shall be appointed by the Commissioners of the District of Columbia and shall be a bona fide resident of the District of Columbia for not less than three years prior to his appointment. He shall devote his full time to the Office of Administrator and shall receive a salary at the rate of $12,000 per annum. The Administrator shall

establish offices, acquire supplies and equipment, and employ such personnel subject to approval by the Commissioners of the District of Columbia, and in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters], without regard to race or creed, as may be necessary in the performance of his functions under this chapter. The Administrator shall submit a semiannual report to the Commissioners of the District of Columbia for transmittal to the Congress of the United States. (Dec. 2, 1941, 55 Stat. 791, ch. 553, § 6; June 30, 1951, 66 Stat. 103, ch. 192, § 1.)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of employees and related matters]" was substituted for "the Classification Act of 1949", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENTS

1952—Act May 8, 1952, increased the yearly salary of the Office of Administrator from $11,200 to $12,000, effective July 1, 1951.

1951—Act June 30, 1951, increased the administrator's salary from $7,500 per annum to $11,200 per annum and substituted "the Classification Act of 1949" for "the Classification Act of 1923, as amended".

EFFECTIVE DATE OF 1951 AMENDMENT

Amendment of section by act June 30, 1951, effective July 1, 1951, see § 2 of act June 30, 1951, set out as a note under § 45–1601.

TRANSFER OF FUNCTIONS

Reorg. Order No. 44 of the Board of Commissioners dated June 23, 1953 established under the direction and control of a Commissioner, an Office of the Administrator of Rent Control headed by an Administrator. The order abolished the previously existing Office of the Administrator of Rent Control and transferred to the new Office all functions and positions of the old Office of the Administrator of Rent Control, and further provided that all personnel, property, records and unexpended balances relating to the functions and positions transferred were similarly transferred to the new Office of the Administrator of Rent Control. This order was issued pursuant to Reorg. Plan No. 5 of 1952. The order and plan are set out in the Appendix to title 1, Administration.

§ 45–1607. Obtaining information.

(a) The Administrator may make such studies and investigations, and obtain or require the furnishing of such information under oath or affirmation or otherwise, as he deems necessary or proper to assist him in prescribing any regulation or order under this chapter, or in the administration and enforcement of this chapter, and regulations and orders thereunder. For such purposes the Administrator may administer oaths and affirmations; may require, by subpena or otherwise, the attendance and testimony of witnesses and the production of documents at any designated place; may require persons to permit the inspection and copying of documents, and the inspection of housing accommodations; and may, by regulation or order, require the making and keeping of records and other documents. No person shall be excused from complying with any requirement under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (U. S. C., 1934 edition, title 49, sec. 46), shall apply with respect to any individual who specifically claims such privilege. In the event of contumacy or refusal to obey any such subpena or requirement under this section, the Administrator may make application to the United States District Court for the District of Columbia for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order.

(b) The Administrator shall have authority to promulgate, issue, amend, or rescind rules and regulations, subject to approval by the Commissioners of the District of Columbia, and to issue such orders as may be deemed necessary or proper to carry out the purposes and provisions of this chapter or to prevent the circumvention or evasion thereof. (Dec. 2, 1941, 55 Stat. 792, ch 553, § 7; Sept. 26, 1942, 56 Stat. 759, ch. 564, § 2; June 30, 1951, 65 Stat. 103, ch. 192, § 1.)

AMENDMENTS

1951—Subsec. (b) was amended by act June 30, 1951, which deleted the last three sentences providing for the issuance of a license "as a condition of engaging in any rental transaction involving the subletting of any housing accommodations or the renting of housing accommodations in a rooming or boarding house, or in a hotel"; defining "rooming or boarding house"; and providing that there would be no fee charged for such license. The provisions of the license were restricted to those outlined by the chapter and those which could be prescribed by "regulation, order, or requirement thereunder".

1942—Subsec. (b) was amended by act Sept. 26, 1942, which deleted "two" and inserting in lieu thereof word "four" in third sentence.

EFFECTIVE DATE OF 1951 AMENDMENT

Amendment of section by act June 30, 1951, effective July 1, 1951, see § 2 of act June 30, 1951, set out as a note under § 45–1601.

NOTES TO DECISIONS

Contracts

Where under this chapter, Administrator's regulation prescribed certain duties for rooming-house operators, including duty of filing schedules and of having maximum rentals established, this chapter entered into and formed a part of contract for sale of rooming-house business as if expressly referred to or incorporated in terms of contract. *Tucker* v. *Beazley* (D. C. Mun. App. 1948, 57 A. 2d 191).

Validity of orders

Order of rent administrator requiring landlords of premises newly placed on rental market to file an application for determination of a maximum ceiling before any future tenancy begins, which order was duly issued and promulgated and was designed to keep landlords from fixing their own rent ceiling without prior approval by the administrator, is valid as being clearly consonant with basic purposes of this chapter. *Watkins* v. *District of Columbia* (D. C. Mun. App. 1948, 60 A. 2d 227).

§ 45–1608. Procedure.

(a) Any petition filed by a landlord or tenant under section 45–1604 shall be promptly referred to an examiner designated by the Administrator. Notice of such action, in such manner as the Administrator shall by regulation prescribe, shall be given the tenant and landlord of the housing accommodations involved. If the petition be frivolous or without merit, the examiner shall forthwith dismiss it. Such

order of dismissal may be reviewed by the Administrator in the manner provided in subsection (c) of this section. The examiner shall grant a hearing upon the petition except in cases dismissed under this subsection.

(b) Hearings under this section shall be conducted in accordance with regulations prescribed by the Administrator. The landlord and tenant shall be given an opportunity to be heard or to file written statements, due regard to be given the utility and relevance of the information offered and the need for expedition. In any such hearing the common-law rules of evidence shall not be controlling.

(c) The examiner, after hearing, shall make findings of fact and recommend an appropriate order. Copies of such findings and order shall be served upon the parties to the proceeding in such manner as the Administrator may prescribe by regulation. Within ten days after such service, any such party may request that the recommended order be reviewed by the Administrator. If there be no such request within such ten days, the findings and recommended order of the examiner shall thereupon be deemed to be the findings and order of the Administrator: *Provided,* That the Administrator may review the proceedings, as herein provided, on his own motion at any time within twenty days after service of the examiner's findings and order upon the parties. The Administrator may, in his discretion, grant a hearing upon the request. Upon such request or motion, the record in the case shall be forthwith transferred to the Administrator for review and he may, in his discretion, grant a hearing. He shall state his findings of fact or affirm the examiner's findings of fact which findings in either case shall be conclusive if supported by substantial evidence, and shall make an appropriate order. (Dec. 2, 1941, 55 Stat. 792, ch. 553, § 8; June 30, 1951, 65 Stat. 104, ch. 192, § 1.)

AMENDMENT

1951—Subsec. (c) was amended by act June 30, 1951, which substituted "ten days" wherever "five days" appeared, and "twenty days" for "ten days".

EFFECTIVE DATE OF 1951 AMENDMENT

Amendment of section by act June 30, 1951, effective July 1, 1951, see § 2 of act June 30, 1951, set out as a note under § 45–1601.

NOTES TO DECISIONS

Adjustment of rent

Under this chapter, Rent Administrator cannot set aside a valid and subsisting lease between parties providing for lower rentals than rent ceiling established by Administrator. *Hildebrand* v. *Nee* (D. C. Mun. App. 1947, 54 A. 2d 640).

The proper method to be used in administering this chapter is that the examiner and the Administrator should consider the various items of operating expenses for the base year and for the last year of operation and should make such adjustments as are necessary, based upon expenses for the intervening years and other relevant data. *Sharpe* v. *Goldwyn* (D. C. Mun. App. 1949, 65 A. 2d 185).

Administartive review, necessity

Where rent ceiling during period of tenants' occupancy was based on landlord's misrepresentations but examiner in proceedings for a redetermination of ceiling refused to set a new ceiling on ground that premises had been withdrawn from rental market, so that ceiling under which tenants had paid rent remained the only ceiling which had been fixed for property, and tenants did not seek administrative or statutory review of examiner's order, tenants could not establish over-ceiling charges for rent on which to base an action to recover double amount allegedly collected by landlord in excess of rent ceiling. *Schachter* v. *Singer* (D. C. Mun. App. 1946, 45 A. 2d 364).

Construction with other laws

Without an existing maximum rent ceiling or maximum service standard as defined in § 45–1602, a proceeding for adjustment under § 45–1604 was unauthorized, and the procedural and review provisions of this section and § 45–1609 were inapplicable. *Sager* v. *Stamps* (D. C. Mun. App. 1944, 38 A. 2d 113).

Dismissal

The Municipal Court has exclusive jurisdiction over actions by tenants to recover rent over-charges and Penalties. The Rent Administrator was correct in ordering a petition for such recovery dismissed since he has no jurisdiction. *Levy* v. *Arsenault* (D. C. Mun. App. 1949, 62 A. 2d 642).

Equitable estoppel

Where landlord petitioned under § 45–1604 for an adjustment, and where Administrator made no determination, it did not preclude landlord from asserting as a defense to tenant's suit for damages that the examiner's recommended order was not a sufficient basis for tenant's suit. The principles of equitable estoppel do not apply where the legal position first asserted is not successfully maintained. *Parker* v. *Sager* (1949, 174 F. 2d 657, 85 U. S. App. D. C. 4).

Evidence

In proceedings on tenants' petitions for adjustments in rent and service, rent examiner did not err in permitting witnesses, who had no independent recollection, to read, from prepared statements, items of expenditures made by landlord. *Reynolds* v. *Korman* (D. C. Mun. App. 1953, 96 A. 2d 362).

Findings conclusive

Where trial court found on conflicting evidence that there was no refusal of landlord to furnish services required by Rent Administrator's order, appellate court was bound by such finding. *Hicks* v. *Behrend* (D. C. Mun. App. 1945, 40 A. 2d 78).

Where evidence sustained Rent Administrator's finding that landlord was entitled to a 10 percent increase in rents under section 1604 (b) of this title, Municipal Court of Appeals for the District of Columbia would be violating fundamental principles applicable to court review of administrative findings, to hold that administrator's conclusion was not supported by substantial evidence or was plainly wrong. *Stokes* v. *Realest Corp.* (D. C. Mun. App. 1948, 60 A. 2d 532).

Findings of fact

Rent Administrator's finding of fact, concededly authorized and material to unappealed ruling made by him in proceeding to adjust upward the rent ceilings, could not subsequently be attacked in another proceeding between the same parties. *Aiken* v. *Cogswell et al.* (1953, 201 F. 2d 705, 91 U. S. App. D. C. 339).

In proceedings on tenants' petitions for adjustments in rent and service, rent examiner's findings and recommended orders failed to disclose basic findings of fact. *Reynolds* v. *Korman* (D. C. Mun. App. 1953, 96 A. 2d 362).

Whether housing accommodations are new ones not rented on critical date under this chapter, or are old ones with substantial capital improvements or alterations, is a question of fact, which must be decided by trier of facts unless evidence is compelling one way or the other. *Marcellino* v. *Gaither* (D. C. Mun. App. 1952, 86 A. 2d 529).

Rent Administrator on landlord's petition for adjustment in rent ceilings is not bound by common law rules of evidence and he has inherent right to take judicial notice of certain facts not presented in evidence, but is not allowed right to reach an ultimate fact determinative of case without the slightest attempt to incorporate into record the basic facts essential to his conclusion. *Aquino* v. *Knox* (D. C. Mun. App. 1948, 60 A. 2d 237).

Findings of fact by Rent Administrator on landlord's petition for adjustment in rent ceilings need not be set

out in detail but they must be shown with substantial particularity to enable petitioner seeking review of Administrator's order to rebut them, and a reviewing court to follow path which has been used. *Id.*

Where the Rent Administrator, upon review of the findings of the examiner, states his findings of fact or affirms the facts as found, such findings shall be conclusive if supported by substantial evidence. *Winkler* v. *Ballard* (D. C. Mun. App. 1949, 63 A. 2d 669).

Findings of fact made by examiner and approved by the Administrator, that landlord had not violated the minimum service standard with respect to bed linen were beyond the power of the examiner or Administrator where the evidence showed laxity in cleaning petitioner's room. *Levy* v. *Arsenault* (D. C. Mun. App. 1949, 62 A. 2d 642).

Orders reviewable

This chapter nowhere expressly authorizes control of meal charges. If, as the Administrator claimed, the meal rates were subject to control, such control rests on the premise that the furnishing of meals is a privilege or facility connected with the use and occupancy of the housing accommodations and therefore a part of the service standard. Until the service standard was completed, the rent ceiling could not be completed. *Hearn* v. *Cogswell* (D. C. Mun. App. 1949, 68 A. 2d 219).

Petition

Landlord's complaint seeking to recover possession of dwelling property under this chapter would not be held bad because it did not contain an allegation that proceeding was in good faith. *De Bobula* v. *Coppedge* (D. C. Mun. App. 1945, 40 A. 2d 255).

Rehearing

Where landlord insisted that a hearing de novo be ordered, new evidence be received, and new findings be made by District of Columbia Rent Administrator following a recommended order by examiner denying increase requested by landlord, landlord could not complain that effective date of the increase as ordered was postponed by reason of the second hearing and order. *Thorn* v. *Miller* (D. C. Mun. App. 1948, 60 A. 2d 223).

Contention that landlord was denied a hearing is without foundation where the case had already been heard and was not remanded for a hearing on all the issues and where upon an inspection of the premises by the examiner in the presence of counsel for the Administrator, the landlord and his manager neither tendered nor offered additional evidence. These facts constituted a sufficient hearing. *Block* v. *Tenants* (D. C. Mun. App. 1950, 70 A. 2d 59).

Res judicata

Where tenant's petition for rent refund was dismissed for lack of jurisdiction of relief sought, and Administrator had undertaken to make findings on some of the questions in controversy, such findings are without effect and are not res judicata in any other proceedings involving the question. *Levy* v. *Arsenault* (D. C. Mun. App. 1949, 62 A. 2d 642).

Time for appeal

Where tenants' motions for rehearing by Rent Examiner and for review by Rent Administrator were filed within times permitted by regulations, and petition for judicial review was filed within ten days after Administrator's final order, appeal was timely, notwithstanding fact that more than 20 days had elapsed between entry of examiner's findings and filing of petition for judicial review. *Reynolds* v. *Korman* (D. C. Mun. App. 1953, 96 A. 2d 362).

§ 45–1609. Court review.

(a) Within ten days after issuance of an order of the Administrator under section 45–1604, any party may file a petition to review such action in the District of Columbia Court of Appeals and shall forthwith serve a copy of such petition upon the Administrator. Thereupon, the Administrator shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript, the court shall have exclusive jurisdiction to affirm or set aside such order, or remand the proceeding: *Provided,* That the Administrator may at any time, upon reasonable notice and modify, or set aside, in whole or in part, any in such manner as he shall deem proper, rescind, such order of the Administrator at any time notwithstanding the pendency of the petition to review.

(b) No objection that has not been urged before the Administrator shall be considered by the court unless the failure to urge such objection shall be excused because of extraordinary circumstances. No order shall be set aside or remanded unless the petitioner shall establish to the satisfaction of the court that the order is not in accordance with law, or is not supported by substantial evidence. The commencement of proceedings under this section shall not, except as provided in subsection (d), operate as a stay of the Administrator's order.

(c) The District of Columbia Court of Appeals is hereby granted exclusive jurisdiction to review any order of the Administrator made pursuant to section 45–1604. The judgment and decree of the court shall be final, subject to review as provided by law relative to other judgments of the court.

(d) No court shall issue any interlocutory order or decree staying the effectiveness of any provision of this chapter or any regulation or order issued thereunder unless the person objecting to such provision, regulation, or order shall file with the court an undertaking with a surety or sureties satisfactory to the court for the payment, in the event such objection is not sustained, of the amount by which the maximum rent, if any, permitted under such provision, regulation, or order exceeds or is less than the amount actually received or paid while such stay is in effect. (Dec. 2, 1941, 55 Stat. 793, ch. 553, § 9; Apr. 29, 1948, 62 Stat. 206, ch. 243, § 3; June 30, 1951, 65 Stat. 104, ch. 192, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6.)

AMENDMENTS

1951—Subsec. (a) was amended by act June 30, 1951, which added "of the administrator" following "order" in the proviso.

Subsec. (c) was amended by act June 30, 1951, which deleted "Three judges of the municipal court, selected in such rotation as the judges of the court shall determine, shall sit in all proceedings under this section and shall participate in the decision of such cases."

CHANGE OF NAME

1948—Act Apr. 29, 1948, substituted "Municipal Court of Appeals" for "Municipal Court" in the first sentence of subsection (a) and first sentence of subsection (c).

Act July 8, 1963, § 6, substituted "District of Columbia Court of Appeals" for "Municipal Court of Appeals for the District of Columbia". Provisions identical with those of said section 6 were contained in act Oct. 23, 1962, 76 Stat. 1172, Pub. L. 88–873, § 6, which was replealed by act Dec. 23, 1963, 77 Stat. 629, Pub. L. 88–241, § 21(a). See section 11–101.

EFFECTIVE DATE OF 1951 AMENDMENT

Amendment of section by act June 30, 1951, effective July 1, 1951, see § 2 of act June 30, 1951, set out as a note under § 45–1601.

SUITS PENDING IN THREE-JUDGE COURT

Section 4 of act Apr. 29, 1948, provided that: "All cases now pending before the statutory three-judge court of the municipal court which have not been presented to that court for decision at the time this Act [amending §§ 45–1601, 45–1602, and 45–1609] takes effect shall forthwith be certified by said court to the Municipal Court

of Appeals for the District of Columbia. Nothing herein contained shall affect the validity of any judgment or decree of the statutory court (consisting of three judges of the municipal court as heretofore provided by law) rendered subsequent to the effective date [Apr. 29, 1948] of this Act in cases heretofore presented to that court and now awaiting decision."

NOTES TO DECISIONS

Administrator's determination

The order of the Rent Administrator fixing the rent ceiling made under § 45–1602 (1) (c) is not appealable, and, furthermore, a finding of fact is not an appealable order. *Weiner* v. *McMahon* (D. C. Mun. App. 1949, 67 A. 2d 525).

Affirmance

In tenant's proceeding before District of Columbia Rent Administrator on petition for adjustment of rent or services, wherein tenants sought determination only that premises were rented on statutory freeze date for claimed sum per month, and such matter was one which could properly be decided only by the Municipal Court, Administrator's dismissal of tenant's petition was proper and was affirmed notwithstanding it was based on wrong reason. *Schlein* v. *Evans* (D. C. Mun. App. 1948, 61 A. 2d 35).

Burden of proof

One seeking a reversal in an appellate court has the burden of affirmatively establishing error. *Jennings* v. *Gilbertson* (D. C. Mun. App. 1950, 74 A. 2d 839).

Compelling orders

Three-judge Municipal Court of District of Columbia could not require Administrator of Rent Control to promulgate an order that collection of rent for accommodations as to which no ceiling had been fixed is subject to refunding to tenant of excess over ceiling subsequently determined. *Kern* v. *Cogswell* (D. C. Mun. App. 1948, 59 A. 2d 793).

Construction

Subsection (a) of this section must be read in conjunction with subsection (c) of this section. *Fabianich* v. *Hart* (D.C. Mun. App. 1943, 31 A. 2d 881).

Construction with other laws

Without an existing maximum rent ceiling or maximum service standard as defined in § 45–1602, a proceeding for adjustment under § 45–1604 was unauthorized, and the procedural and review provisions of § 45–1608 and this section were inapplicable. *Sager* v. *Stamps* (D. C. Mun. App. 1944, 38 A. 2d 113).

Equitable estoppel

Where landlord petitioned under § 45–1604 for an adjustment, and where Administrator made no determination, it did not preclude landlord from asserting as a defense to tenant's suit for damage that the examiner's recommended order was not a sufficient basis for tenant's suit. The principles of equitable estoppel do not apply where the legal position first asserted is not successfully maintained. *Parker* v. *Sager* (1949, 174 F. 2d 657, 85 U. S. App. D. C. 4).

Evidence

On appeal from order of Rent Administrator refusing rent ceiling adjustment to landlord for the furnishing of an apartment, evidence sustained administrator's finding that landlord's rent was sufficiently high in the first instance without requiring any upward adjustment to compensate him for the furnishings. *Zenith Apartments* v. *Adams* (D. C. Mun. App. 1952, 90 A. 2d 223).

Final orders

Denial of a preliminary injunction is not a final order nor is it a form of an interlocutory order from which appeal lies. *Levy* v. *Arsenault* (D. C. Mun. App. 1949, 63 A. 2d 671).

Findings of fact

In proceedings on tenants' petitions for adjustments in rent and service, rent examiner's findings and recommended orders failed to disclose basic findings of fact with that substantial particularity required by this chapter. *Reynolds* v. *Korman* (D. C. Mun. App. 1953, 96 A. 2d 362).

Rent Administrator is not concerned with net income from housing accommodations, but only with increase in rent sufficient to compensate in whole or in part for increased operating expenses. *Hall* v. *Ring Management Company* (D. C. Mun. App. 1949, 63 A. 2d 656).

Where examiner's findings that reduction in service did not form sufficient basis for an adjustment of maximum rent is supported by substantial evidence, it will not be set aside. *Id.*

Findings of fact and conclusions of law

It was not error for the trial court to deny appellant's request for findings of fact and conclusions of law, for trial court rules provide that in actions tried on the facts without a jury the court may, if requested by any party, find the facts specially and state separately its conclusions of law. The rule is permissive, not mandatory. *Eide* v. *Traten* (D. C. Mun. App. 1950, 73 A. 2d 522).

Judgment

Judgment on reciprocal claims between different parties should be set off against each other and satisfaction of both should be entered in the amount of the smaller claim. *Block* v. *Gates* (D. C. Mun. App. 1949, 68 A. 2d 215, modified on other grounds 68 A. 2d 898).

Judicial notice

Court will take judicial notice that during the war the government and various persons in official and unofficial positions urged that the public forego luxury items which consumed manpower and critical war materials. It cannot be said as a matter of law that the landlord's refusal to supply such items rendered him guilty of a service standard violation. *Connolly* v. *B. F. Saul Co., Inc.* (D. C. Mun. App. 1949, 68 A. 2d 236).

Moot questions

Where payment of judgment in action to recover double rent under § 45–1610, if any, was an involuntary one, issue in case was not rendered moot. *King* v. *McKnight* (D. C. Mun. App. 1948, 61 A. 2d 714).

Where in the record itself, nothing is revealed concerning an alleged payment, court cannot resolve dispute in respect thereof on the basis of contradictory statements in the brief. *Acuino* v. *Winthrop* (D. C. Mun. App. 1949, 65 A. 2d 602).

Orders rescinded

Section 9 of the Rent Act authorizes the Administrator at any time to rescind, modify, or set aside a section 4 order, but a section 4 order cannot be summarily set aside and a new order entered without consideration of the evidence offered. *Hearn* v. *Cogswell* (D. C. Mun. App. 1949, 68 A. 2d 219).

Orders reviewable

This section, giving municipal court exclusive jurisdiction to review any order of the administrator made "pursuant to" section 45–1604, refers to orders specifically provided for said § 45–1604, and does not authorize review of any order made in course of proceeding under § 45–1604. *Fabianich* v. *Hart* (D.C. Mun. App. 1943, 31 A. 2d 881).

Under this section giving municipal court exclusive jurisdiction to review orders made pursuant to § 45–1604 and under § 45–1604, authorizing only orders definitely fixing new rent ceilings or adjusted minimum service requirements, municipal court had no jurisdiction to review order directing rehearing in proceeding under said section 45–1604. *Id.*

A general order of Administrator of Rent Control requiring landlords to file petitions for determination of maximum rent ceilings, and reciting that, until further notice, Administrator will assume, but not concede, that first rent collected by landlord is fair and reasonable, was not an adoption of rent then charged as a "maximum rent ceiling", and landlord's petition for court review of adjustment of rent or service on basis of such order was properly dismissed. *Sager* v. *Stamps* (D. C. Mun. App. 1944, 38 A. 2d 113).

Municipal Court of Appeals was not required to pass upon the validity of an interpretative order of the Administrator under this chapter, where neither tenant nor landlord had sought a court review of such order. *Hall* v. *Henry J. Robb, Inc.* (D. C. Mun. App. 1944, 34 A. 2d 863).

Where petitioner asserts that there is nothing in the record to indicate by what means the examiner and the Administrator arrived at the ceiling fixed, the claim is without merit where the record shows that testimony was taken and exhibits were introduced and considered on a personal inspection by the examiner. *Jennings* v. *Gilbertson* (D. C. Mun. App. 1950, 74 A. 2d 839).

Where an error charged relates to the refusal of the examiner to grant a continuance of the hearing, such a refusal is in the field of discretion and is seldom reviewable on appeal. *Id.*

Rent Act provides that objections not urged before the Administrator shall not be considered by the court, unless failure to urge them shall be excused because of extraordinary circumstances. Where no extraordinary circumstances are presented, orders are not reviewable. *Id.*

Where the evidence presented showed that the Administrator's determination of the ceiling was under § 2 of the Act, despite the contention of the claimant that it was under § 4, no appeal lies. *Cox* v. *Cogswell* (D. C. Mun. App. 1949, 69 A. 2d 659).

Where examiner averaged the expenses for years 1942 through 1947, inclusive, and allowed a sufficient rental increase to make up for the excess of such averaged operating expenses over the operating expenses for 1941, such method was improper because it failed to take into account the various items of operating expenses for the base year and intervening years. *Shapiro* v. *Bombardier* (D. C. Mun. App. 1949, 63 A. 2d 772).

Where there is a single tenancy and nothing in the record that either landlord or tenant ever regarded it as divisible, no separate toilet facilities for the housing and alleged commercial part thereof, only one heating unit, one meter for electricity, gas and water, it was error for Rent Administrator to rule that the unit was both a commercial and housing accommodation. *Wayne* v. *Burke* (D. C. Mun. App. 1949, 63 A. 2d 669).

Contention of Administrator that an order entered under § 45–1607 is not reviewable because Act limits review of those under § 45–1604 is without merit. If this position were correct, then in any § 45–1604 proceeding, after time for review of the order has passed, the Administrator could issue an order under § 45–1607 abrogating or changing the § 45–1604 order and thereby effectively prevent court review of the § 45–1604 proceeding. *Hearn* v. *Cogswell* (D. C. Mun. App. 1949, 63 A. 2d 219).

Where ceiling has been regularly and properly established and has stood unchanged throughout the term, it could be rendered invalid only by alteration, or change of the building, real estate, service or facilities. *Sawyer* v. *Warner* (D. C. Mun. App. 1950, 73 A. 2d 653).

Where petitioner specifically requested Administrator to issue an order declaring a refund for over-charges, failure of the Administrator to bring suit is not reviewable on appeal where no objection was urged before the Administrator, no extraordinary circumstances were shown and no reason shown why petitioner should not have filed suit himself. *Levy* v. *Arsenault* (D. C. Mun. App. 1949, 62 A. 2d 642).

Orders set aside

Order of Rent Administrator adjusting rent ceilings of various apartments on landlord's petition would be set aside on subsequent petition by landlord as not supported by substantial evidence, and as denying due process where Administrator made general finding that landlord's expenses had increased substantially and entitled landlord to increase to extent allowed and then further found that to give a larger increase would raise rents above those for comparable housing accommodations without showing what if any comparable housing accommodations were used in making up the order. *Aquino* v. *Knox* (D. C. Mun. App. 1948, 60 A. 2d 237).

Where examiner and Rent Administrator compared the operating expenses for the last year of operations with those of the first year and granted an increase sufficient to produce in full the increase in expenditures determined by this method, such procedure is improper and must be set aside. *Hall et. al* v. *Ring Management Company* (D. C. Mun. App. 1949, 63 A. 2d 656).

Failure of an examiner and Rent Administrator to make detailed findings of fact showing basis for rental increase allowed, and failure to make allowance for the fact that expenses for last year's operation is not typical, is improper and order must be set aside. *Id.*

Where Rent Administrator averaged expenses for the years 1941 to 1947 inclusive, deducted the 1941 expenses from such average, and granted a sufficient rent increase to produce the difference, such procedure is improper and orders based thereon must be reversed. *Proctor* v. *Miller* (D. C. Mun. App. 1949, 63 A. 2d 665).

Petition for review

The petition for review must be dismissed where there is no final order of the Administrator which can be reviewed where the filing of a petition prevented the examiner's recommended order from becoming effective. *Parker* v. *Williams* (D. C. Mun. App. 1950, 71 A. 2d 770).

Question for jury

The question whether accommodations involved are new ones, or old ones with substantial capital improvement, is a question of fact for the jury. *Sawyer* v. *Warner* (D. C. Mun. App. 1949, 63 A. 2d 653).

Questions not raised below

No objection that has not been urged before the Rent Administrator may be considered by the court unless the failure to urge such objection may be excused because of extraordinary circumstances. *Crisp* v. *Giles* (D. C. Mun. App. 1949, 65 A. 2d 204).

Record

Where in District of Columbia Municipal Court tenant's brief described in detail proceedings before Rent Administrator but such statements were unsupported by record, appellate court could not determine whether tenant by applying to Rent Administrator for rent adjustment because of landlord's alleged failure to supply minimum service exhausted remedies and was precluded from recovering damages for failure to supply minimum services. *Zindler* v. *Buchanon* (D. C. Mun. App. 1948, 61 A. 2d 616).

It may be that the rent increase ordered by the Administrator was justified by the record before him, but the record does not disclose what the total rent increase in dollars amounted to. On numerous occasions the court has pointed out the necessity of including in the record figures on which at least the approximate correctness of the Administrator's finding may be determined. *Corey* v. *Fitzgerald* (D. C. Mun. App. 1950, 73 A. 2d 230).

Facts asserted by the petitioner's counsel, which do not appear in the examiner's Statement of Evidence or any other evidentiary form in the record and bear no approval or certification of the Rent Administrator, are not part of the record and cannot be considered on appeal. *Bailey* v. *Maple* (D. C. Mun. App. 1949, 63 A. 2d 333).

Remedy as exclusive

The remedy provided by this section for review of the orders of the Administrator is exclusive, and a party dissatisfied with such order must pursue the remedy given, and cannot in an action brought for violation of that order collaterally attack it. *Hall* v. *Henry J. Robb, Inc.* (D. C. Mun. App. 1944, 34 A. 2d 863).

Right of appeal

Statutory authority of Municipal Court of Appeals to review orders of Administrator of Rent Control was not applicable to order of Administrator dismissing application of tenants to reopen case in which examiner recommended an order adjusting maximum rent ceiling, which order became final order of Administrator. *Nolan* v. *Cogswell* (D. C. Mun. App. 1952, 91 A. 2d 832).

Rent Administrator, for benefit of all litigants, has right to use every available means, including that of appeal, to insure that his orders and regulations, when promulgated, are made effective. *Cogswell* v. *Aiken* (D. C. Mun. App. 1951, 82 A. 2d 749).

Time for appeal

Where tenants' motions for rehearing by Rent Examiner and for review by Rent Administrator were filed within times permitted by regulations, and petition for judicial review was filed within ten days after Administrator's final order, appeal was timely, notwithstanding fact that more than 20 days had elapsed between entry of examiner's findings and filing of petition for judicial review. *Reynolds* v. *Korman* (D. C. Mun. App. 1953, 96 A. 2d 362).

Where 10-day period under subsection (a) of this section for filing of a petition to review an order of Rent Administrator expired on a Sunday, and petition for review was filed with clerk of court on Monday, petition was timely. *Wayne* v. *Burke* (D. C. Mun. App. 1948, 61 A. 2d 714). See, also, *Wayne* v. *Burke* (D.C. Mun. App. 1949, 68 A. 2d 669).

§ 45–1610. Enforcement—Penalties.

(a) If any landlord receives rent or refuses to render services in violation of any provision of this chapter, or of any regulation or order thereunder prescribing a rent ceiling or service standard, the tenant paying such rent or entitled to such service, or the Administrator on behalf of such tenant, may bring suit to rescind the lease or rental agreement, or, in case of violation of a maximum-rent ceiling, an action for double the amount by which the rent paid exceeded the applicable rent ceiling and, in case of violation of a minimum-service standard, an action for double the value of the services refused in violation of the applicable minimum-service standard or for $50, whichever is greater in either case, plus reasonable attorneys' fees and costs as determined by the court. Any suit or action under this subsection may be brought in the District of Columbia Court of General Sessions regardless of the amount involved, and the District of Columbia Court of General Sessions is hereby given exclusive jurisdiction to hear and determine all such cases.

(b) No person shall be held liable for damages or penalties in any court on any grounds for or in respect of anything done or omitted to be done in good faith pursuant to any provision of this chapter or any regulation, order, or requirement thereunder, notwithstanding that subsequently such provision, regulation, order, or requirement may be modified, rescinded, or determined to be invalid. The Administrator may intervene in any suit or action wherein a party relies for ground of relief or defense upon this chapter or any regulation, order, or requirement thereunder. No costs shall be assessed against the Administrator in any proceedings had or taken in accordance with this chapter.

(c) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of this chapter, or any regulation, order, or requirement thereunder, he may make application to the United States District Court for the District of Columbia for an order enforcing compliance with this chapter or such regulation, order, or requirement, and upon a proper showing a permanent or temporary injunction, restraining order, or other order, shall be granted without bond. (Dec. 2, 1941, 55 Stat. 794, ch. 553, § 10; Apr. 19, 1949, 63 Stat. 49, ch. 73, § 6; June 30, 1951, 65 Stat. 105, ch. 192, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

AMENDMENTS

1951—Act June 30, 1951, redesignated subsecs. (c) and (d) as subsecs. (b) and (c).

1949—Subsec. (b) was repealed by act Apr. 19, 1949.

CHANGE OF NAME

Act July 8, 1963, § substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

EFFECTIVE DATE OF 1951 AMENDMENT

Amendment of section by act June 30, 1951, effective July 1, 1951, see § 2 of act June 30, 1951, set out as a note under § 45–1601.

RECONTROL OF ACCOMMODATIONS

See note under § 45–1601.

NOTES TO DECISIONS

Accord and satisfaction

Agreement between the parties which stated that "in consideration of your having permitted us to sub-let the apartment during period that rent control is continued, we release you from and waive any claim against you," was an accord and satisfaction, relieving landlord from liability. *Perper* v. *Danford* (D. C. Mun. App. 1949, 63 A. 2d 773).

On question whether a payment by a tenant to a landlord was rent, or whether such payment constituted an accord and satisfaction as to which party should pay for the installation of a new furnace in the rented premises, evidence sustained finding that it was in accord and satisfaction. *Bond* v. *Pinchot* (D. C. Mun. App. 1949, 66 A. 2d 213).

Administrative findings

Under this chapter, administrator in a proceeding for adjustment of rent ceilings can properly inquire into subject of what premises rented for on freeze date for incidental purpose of enabling him to decide what rent should be, but his finding as to what rent was on that date would not be binding on municipal court in subsequent litigation between the parties for rent overcharges. *Evans* v. *Schlein* (D. C. Mun. App. 1948, 61 A. 2d 32).

Admissibility of evidence

Where Municipal Court for District of Columbia in action by tenant against landlord to recover alleged rent overcharge admitted parol evidence of landlord's rent agent that when he made out written form showing ceiling rent he made a mistake, and on appeal Municipal Court of Appeals held that Municipal Court did not err in admitting the parol evidence because written form could be varied by parol testimony as the written form was collateral to fact in issue, and on second trial Municipal Court admitted parol testimony but did not consider parol testimony in making its decision, failure to consider parol testimony was reversible error. *Bryant* v. *Abramowitz* (D. C. Mun. App. 1953, 96 A. 2d 44).

In tenant's suit for rent overcharges, wherein landlord contended that payments allegedly made in excess of Rent Act were in fact installment payments on purchase of furniture, erroneous admission of self-serving declaration, in form of landlord's income tax return, would require reversal, where there was evidence from which court could have found that transaction was a scheme and device to avoid this chapter and importance of erroneously admitted evidence was indicated by fact that landlord had persisted in offering it over strenuous objection. *Prowant* v. *Burke* (D. C. Mun. App. 1952, 90 A. 2d 225).

In action by tenants against landlord and her rental agents to recover statutory penalty for rental overcharge and cross-claim by landlord against her agents for breach of agency agreement, evidence offered by agents to show landlord's lack of good faith was properly excluded, in view of fact that question of good faith was not proper issue. *Shenk* v. *Gaudet* (D. C. Mun. App. 1951, 83 A. 2d 672).

In roomer's action against owners of rooming house for penalty provided by this section for depriving roomer of minimum service standards, and for damages for unlawful eviction, owner's evidence that roomers conduct constituted a nuisance was not properly admitted, though defense of nuisance was not affirmatively pleaded in the answer. *Lindsey* v. *Watson* (D. C. Mun. App. 1951, 83 A. 2d 226).

Where plaintiff in action under this section to recover double amount of alleged over-ceiling rents charged was permitted to go outside lease to establish a prima facie violation of section 45–1602, exclusion of evidence rebutting such showing was error, where excluded evidence merely put the lease in its proper setting. *Fulton R. Gordon, Inc.* v. *Schram* (D. C. Mun. App. 1945, 44 A. 2d 662).

In action under this section to recover double over-ceiling rent charge, where issue was whether landlord had received rent in excess of legal ceiling and lease was offered merely as evidence that defendants contracted for rent in excess of legal ceiling, and hence was collateral to the main issue, parol evidence was admissible to vary terms of lease. *Id.*

Where parol evidence was necessary to explain two items on face of lease, testimony that individual defendant leased furnished premises to plaintiff in dual capacity as agent of corporate defendant which owned property and as agent of third person who owned furniture and that, in distribution of rent received by individual defendant, corporate defendant did not receive more than maximum rent ceiling, was admissible in tenant's action to recover double amount of alleged over-ceiling rent charges. *Id.*

In prosecution of landlord for violating an order of rent administrator by failing to file application for determination of maximum rent ceilings before the beginning of a tenancy, negative evidence showing lack of receipt was competent to show landlord's failure to file, and mere statement by official witnesses that there was a possibility that papers might have been lost went only to weight of evidence. *Watkins* v. *District of Columbia* (D. C. Mun. App. 1948, 60 A. 2d 227).

Amendment of pleadings

Where it appeared that defendant in action to recover double rent should have been permitted to restate his defense in an amended answer so that trial court would be able to determine whether complaint and answer presented any issues of fact or whether case was one turning entirely on question of law, refusal to grant defendant leave to file amended answer was improper. *King* v. *McKnight* (D. C. Mun. App. 1948, 61 A. 2d 714).

Court's rules permit an amendment to the complaint as a matter of course at any time before a responsive pleading is served. Where defendant has not answered but has filed a motion to dismiss, such a motion is not a responsive pleading within the meaning of the rule. *Lustine* v. *Williams* (D. C. Mun. App. 1949, 68 A. 2d 900).

Amount of recovery

Proof of landlord's violation of the minimum service standard under this section may be made by showing failure to comply with the standard in one or more particulars, but the action is a single action, and where tenant does not prove the value of the services refused, recovery is limited to $50, though the standard was violated in many particulars. *Hall* v. *Henry J. Robb, Inc.* (D. C. Mun. App. 1944, 34 A. 2d 863).

This section is limited to receipt of rent in violation of this chapter or of any provision or order thereunder prescribing a rent ceiling, and finds no support in a failure, however contumacious to comply with Rent Administrator's orders of a different character. *Dekelbaum* v. *Lloyd* (D. C. Mun. App. 1945, 41 A. 2d 174).

Where this chapter fixed maximum rent to which landlord was entitled for a lease of housing accommodations as $250, lease providing for a monthly rental of $265, was ineffective to raise the rent ceiling, and tenant was entitled to recover under subsection (a) of this section, double the amount paid in excess of the ceiling. *Wilner* v. *Vartanian* (D. C. Mun. App. 1947, 55 A. 2d 88).

In tenants' action against landlords to recover for overcharge of rent and for failure to maintain minimum service standards under this section, amount of recovery is limited strictly to right to recover twice overcharge and double value of services refused. *Evans* v. *Schlein* (D. C. Mun. App. 1948, 61 A. 2d 32).

Under subsection (a) of this section authorizing tenant's recovery only of value of services which landlord fails to furnish, or $50, whichever is greater, when value of services is not proved, only one item of $50 may be recovered. *Zindler* v. *Buchanon* (D. C. Mun. App. 1948, 61 A. 2d 616).

A violation of this chapter is to be considered entire. If twice the total over-charge exceeds the $50.00 minimum, such larger amount is the maximum which may be recovered by a tenant and he may not recover $50.00 for each separate violation. *Mancuso* v. *Santucci* (D. C. Mun. App. 1949, 69 A. 2d 274).

Attorneys' fees and costs

This section contemplates reasonable attorneys' fees in both trial and appellate proceedings, but allowance of such fees must be made by the trial court. *Grady* v. *Prewitt* (D. C. Mun. App. 1953, 99 A. 2d 755).

Where landlord sought possession of two apartments and tenants counterclaimed for alleged overcharges of rent and trial court entered judgment for landlord and against tenants but only Rent Administrator appealed and framed the issues on appeal, and Municipal Court of Appeals directed trial court to enter judgment on tenants' counterclaims, allowance of counsel fees to tenants was mandatory but amount of fees was within trial court's discretion. *Cogswell* v. *Aiken et al.* (D. C. Mun. App. 1951, 83 A. 2d 231).

Failure to submit proof of value of services of tenant's attorneys in action to recover double amount of rent paid in excess of maximum rent ceiling did not prevent trial judge from awarding a fee under subsection (a) of this section, since trial judge would be considered an expert on value of legal services. *Tyler* v. *Dixson* (D. C. Mun. App. 1948, 57 A. 2d 648).

Where award of fees to tenant's attorney in action to recover double amount of rent paid in excess of maximum rent ceiling appeared to be generous in amount but not so manifestly excessive as to constitute an abuse of discretion, award would not be disturbed, but additional attorneys' fees for services rendered in connection with appeal would be denied. *Id.*

Appellee's request for additional allowance for attorneys' fees to cover appellate services is improper. Fees for such services whether in trial or appellate courts should be fixed by the trial court. *Heitmuller* v. *Berkow* (1949, 171 F. 2d 741, 83 U. S. App. D. C. 342).

There being no court rule allowing same, transcript cannot be taxed as costs nor are attorneys' fees on appeal allowable. *Sawyer* v. *Warner* (D. C. Mun. App. 1949, 63 A. 2d 653).

It is a correct rule of law that attorney's fee allowed under a statute not providing specifically that it go to the attorney is an allowance to the party and not to the attorney, and may be credited in arriving at a net judgment between the parties. The court should set off the claim, costs and allowances of one party against those of the other; and also the claim of an attorney for a charging lien should not defeat such a setoff. *Block* v. *Gates* (D. C. Mun. App. 1949, 68 A. 2d 898).

Bad faith

In tenant's suit against landlords to recover for alleged rental overcharges, fact that landlords had, prior to beginning of tenancy, rented premises to another person at the January 1, 1941, frozen rent ceiling of $41 a month, was sufficient to raise an inference of lack of good faith on part of landlords when they subsequently collected $77.50 a month rental. *Parker* v. *Williams* (D. C. Mun. App. 1951, 81 A. 2d 653).

Bill of particulars

A bill of particulars, which alleged that plaintiff as tenant in apartment called upon landlord to perform certain painting and refinishing necessary to bring apartment up to minimum service standard under § 45–1605 (a), that landlord refused to do so, and that plaintiff thereupon had the work performed, that reasonable value of such work was $115.08 and that, under this chapter, plaintiff was entitled to recover twice the value of his services, costs and attorney's fees was sufficient. *Goldberg* v. *Roumel* (D. C. Mun. App. 1945, 40 A. 2d 253).

On its face, a bill of particulars stated an over-charge of rent for which the defendant would be liable for statutory damages irrespective of an erroneous theory as to the amount recoverable since an improper measure of damages is not a ground for dismissal. *Mancuso* v. *Santucci* (D. C. Mun. App. 1949, 69 A. 2d 274).

Burden of proof

In tenants' action to recover double amount of rent overcharges against landlord who had converted accommodations on which rent ceiling had been established into new accommodations and who had made agreement with tenant for increased rentals without filing for new rent ceiling, burden of establishing that property was being used as housing accommodations on freeze date and that such housing accommodations were substan-

tially the same as those to which tenants were entitled when they secured possession of property was improperly placed on tenants. *Fowler* v. *Stanford* (D. C. Mun. App. 1952, 89 A. 2d 885).

Roomer could not recover against owners of rooming house for penalty provided by this section for depriving roomer of minimum service standards where roomer did not establish the minimum service standard under any of the tests enumerated in the act. *Lindsey* v. *Watson* (D. C. Mun. App. 1951, 83 A. 2d 226).

Tenant claiming that landlord had refused to maintain minimum service standard with respect to decorating apartment occupied by its tenant, had burden of establishing such fact. *Goldberg* v. *Roumel* (D. C. Mun. App. 1946, 47 A. 2d 790).

In prosecution of a landlord for violation of a general order of rent administrator, government had burden to prove that landlord failed to comply with terms of order and that failure to do so was a willful one. *Watkins* v. *District of Columbia* (D. C. Mun. App. 1948, 60 A. 2d 227).

To prove violations of this chapter, it is incumbent on the tenant first to establish the existence of the ceiling and standard. *Eide* v. *Traten* (D. C. Mun. App. 1950, 73 A. 2d 522).

Tenant by his answer and counterclaim admitted that he had not paid rent for the period from September 15 to October 31 and that he owed $97.50 for such period. Unless, as tenant claims, the landlord had collected rent in excess of the ceiling and had violated the minimum service standard, the allegation was an affirmative defense and the trial court properly ruled that the burden was on the tenant to proceed and prove his defense. *Id.*

In a suit by a tenant for damages for violation of minimum service standard for lack of heat, it was not error to dismiss claim where plaintiff failed to make out a prima facie case since there was no evidence that the minimum service standard included furnishing heat by the landlord. *Bond* v. *Pinchot* (D. C. Mun. App. 1949, 66 A. 2d 213).

In order to obtain damages for violation of service standard, the tenant must show that he has been deprived of a service to which he was entitled as of right. *Hutchinson* v. *Peacock* (D. C. Mun. App. 1950, 73 A. 2d 903).

Ceiling

For housing accommodations not rented within year ending January 1, 1941, no maximum rent ceiling exists until determined by Administrator of Rent Control, and until then, parties' rights are those fixed by lease agreement and there can be no violation of the ceiling. *Kern* v. *Cogswell* (D. C. Mun. App. 1948, 59 A. 2d 793).

Where ceiling has been regularly and properly established and has stood unchanged throughout the term, it could have been rendered invalid only by alteration, or change of the building, real estate, service or facilties. *Sawyer* v. *Warner* (D. C. Mun. App. 1949, 63 A. 2d 653).

Commercial user

Where tenant who had been renting first floor only for $50 rented entire building for $80 in 1939, and subsequently sublet second floor for $30 which had automatically become the rent ceiling for second floor, and first floor was not subject to this chapter because used commercially, this chapter was not violated. *Ridolfi* v. *Benton* (D. C. Mun. App. 1948, 58 A. 2d 723).

Where landlord and tenant had consistently treated first and second floors of building as divisible, and use of one floor was not essential to use of the other, fact that the two floors were rented as a whole at time of passage of this chapter and on freeze date, did not require that premises be considered as a whole, nor preclude subsequent execution of separate leases, and rental for first floor, used mostly for barber shop, was a matter for agreement between parties. *Id.*

Criminal prosecutions

Where after conviction under this section, but before sentence, the section was stricken from the act, the pending prosecutions for violations committed while section was in force should have been continued because they were saved by the saving clause contained in U.S. Code, title 1, § 109. *Quick* v. *District of Columbia* (D. C. Mun. App. 1950, 71 A. 2d 771).

Dismissal

Dismissal with prejudice by stipulation of parties of actions involving defendants' counterclaim for failure of plaintiff landlord to repair a refrigerator in apartment rented to defendants, did not dispose of defendants' counterclaim in subsequent action for failure to repair refrigerator concerning a period subsequent to the periods involved in the previous actions. *Block* v. *Wilson* (D. C. Mun. App. 1948, 61 A. 2d 493).

Estoppel

Where landlord petitioned under § 45–1604 for an adjustment, and where Administrator made no determination, this did not preclude landlord from asserting as a defense to tenant's suit for damages that the examiner's recommended order was not a sufficient basis for tenant's suit. The principles of equitable estoppel do not apply where the legal position first asserted is not successfully maintained. *Parker* v. *Sager* (1949, 174 F. 2d 657, 85 U. S. App. D. C. 4).

Tenant's right to services supplied by landlord on statutory freeze date was guaranteed by § 45–1605 and was not lost by tenant's agreement to take the apartment "as is," neither did such agreement estop the tenant from maintaining action for damages under this section. *Baker* v. *Rosen* (D. C. Mun. App. 1948, 58 A. 2d 687).

Fair trial

In prosecution of landlord for violation of rent regulation, alleged circumstances that cause was first prosecution of kind brought under subsection (b) of this section, that tenants who testified against landlord were motivated by malice engendered by a prior civil action between them and landlord, that assistant general counsel was appointed special prosecutor for the one case, and that witnesses caused prejudicial newspaper accounts to be published, in absence of an affirmative showing that such circumstances deprived landlord of a fair trial, were irrelevant. *Watkins* v. *District of Columbia* (D. C. Mun. App. 1948, 60 A. 2d 227).

Good faith

In action by tenants against landlord for rent overcharges, good faith of landlord was not in issue, and constituted no defense, in absence of any showing by landlord that in overcharging tenants, he was relying on a rescinded or modified order or regulation of the Administrator. *Jeziorski et al.* v. *Hollod* (D. C. Mun. App. 1954, 106 A. 2d 698).

Landlord was not relieved of liability for above ceiling rent charges, on ground that landlord acted in good faith, because it obtained from Rent Administrator furnished ceilings on comparable apartments in same building and charged no more than those rates for apartments for which it did not first obtain furnished ceiling rates. *Grady* v. *Prewitt* (D.C. Mun. App. 1953, 99 A. 2d 755).

Where rental agents, who had no actual knowledge of rent ceiling order, collected rental charge over ceiling, but did not rely on any rescinded or modified order or regulation of rent administrator or statutory provision in collecting overcharge, good faith of agents was not in issue upon tenants' attempt to recover double amount of overcharge. *Shenk* v. *Gaudet* (D. C. Mun. App. 1951, 83 A. 2d 672).

Intervention by administrator

Where landlord sought possession of two apartments for default in rent and tenants counterclaimed for alleged overcharges of rent, Rent Administrator, who intervened in trial court before judgments were entered for landlord and against tenants, could maintain independent appeal. *Aiken* v. *Cogswell et al.* (1953, 201 F. 2d 705, 91 U. S. App. D. C. 339).

Where trial court permitted intervention by rent administrator without requiring compliance with rule that intervenor shall serve motion to intervene on all parties affected thereby, accompanied by pleading setting forth claim, rent administrator would not be deprived of rights as intervenor because of such procedural defect. *Cogswell* v. *Aiken* (D. C. Mun. App. 1951, 82 A. 2d 749).

Rent administrator, for benefit of all litigants, has right to use every available means, including that of appeal, to insure that his orders and regulations, when promulgated, are made effective. *Id.*

Where in the course of a trial, intervention by the Administrator was sought and granted, appellant's claim that such procedure tended to disrupt the orderly course of the trial by placing opposing counsel at a disadvantage is without merit. Generally, the Administrator should be required to make his decision on intervention at the commencement of the trial, but that is a matter resting largely in the discretion of the trial court. *Turner* v. *Bowman* (D. C. Mun. App. 1949, 68 A. 2d 231).

Judgment

Entry of judgment for tenant in landlord's action against tenant for a non-payment of rent was wrong where defendant had admittedly paid no rent for a particular month. *Kelley* v. *Hinnant* (D. C. Mun. App. 1953, 97 A. 2d 339).

In action by tenants against landlord and her rental agents to recover penalty for rental overcharge, since liability between agents was divided and judgment was joint and several one, payment of entire judgment by agents would entitled them to complete satisfaction of all judgments entered against them, including judgment recovered by landlord on cross-complaint, and would entitle landlord to complete satisfaction of judgment entered against her. *Shenk* v. *Gaudet* (D. C. Mun. App. 1951, 83 A. 2d 672).

In action by tenants against landlord and her rental agents to recover statutory penalty for rental overcharge and cross-claim by landlord against her agents for breach of agency agreement, judgment, which was entered separately against agents and landlord for amount due tenants and which ordered recovery by landlord against agents for amount paid to tenants, did not order contribution. *Id.*

In action by tenants against landlord and her rental agents to recover statutory penalty for rental overcharge and upon cross-claim by landlord against her agents for breach of agency agreement, verdict for landlord on cross-claim was not inconsistent with verdict for tenants against landlord and her agents, even though jury found landlord did not act in good faith towards tenants. *Id.*

Jurisdiction

Municipal court had jurisdiction of counterclaim of defendant for rent overcharges and violation of minimum service requirements, interposed by tenant in an action brought by plaintiff-landlord for rent and water charges, irrespective of amounts involved in counter claim. *McChesney* v. *Moore* (D. C. Mun. App. 1951, 78 A. 2d 389).

Exclusive jurisdiction is invested in municipal court by subsection (a) of this section to determine all actions for rent overcharges and includes power to decide all incidental and preliminary questions including specifically the question as to whether property was rented on the freeze date and at what rental. *Evans* v. *Schlein* (D. C. Mun. App. 1948, 61 A. 2d 32).

The Administrator was correct in dismissing petition for refund of rent over-charges for lack of jurisdiction, inasmuch as the Municipal Court has exclusive jurisdiction over actions by tenants to recover rent over-charges and penalties for failure to provide minimum service standards. *Levy* v. *Arsenault* (D. C. Mun. App. 1949, 62 A. 2d 642).

Liability of agent

In action by tenants against landlord and her rental agents to recover penalty for rent overcharge, upon cross-claim by landlord against her agents for breach of agency agreement, alleged fact that landlord did not act in good faith towards her tenant did not preclude recovery by her against her rental agents. *Shenk* v. *Gaudet* (D. C. Mun. App. 1951, 83 A. 2d 672).

Real estate agent who signed rental agreement of residential premises, which called for monthly rental in excess of maximum permitted under law, was liable to tenants for monthly overcharge. *Santucci* v. *Mancuso* (D. C. Mun. App. 1951, 78 A. 2d 671).

A defendant signing lease as agent for undisclosed landlord and contracting therein for payment of overceiling rent could not escape liability to tenant for excess rent by having turned over to landlord the monies unlawfully collected after deducting defendant's commissions. *Mayer* v. *Buchanan* (D. C. Mun. App. 1947, 50 A. 2d 595).

A defendant signing lease "as agent for the owner only" did not thereby escape liability for double amount of overceiling rent collected, where defendant did not disclose identity of owner, notwithstanding that identity of owner was matter of public record. *Id.*

Where appellant's duties were more janitorial than managerial, and authority with respect to rent was limited to renting at rates fixed by owner, collecting them and turning them over, the amount of rent was no concern of the agent. Having no authority to fix them, the agent was under no duty to ascertain whether they were within the ceiling, and the agent was, therefore, not liable for rental over-charge. *Delpan* v. *Karvosky* (D. C. Mun. App. 1950, 72 A. 2d 33).

Where broker is authorized to receive rent for landlord, he is a "person" within meaning of this section and liable to tenant for over-charges. It is no defense that he is not a party to the lease. *Dunning* v. *Randall Hagner Co.* (D. C. Mun. App. 1949, 63 A. 2d 770).

Where defendant was the undisclosed agent of the actual landlord but had described itself as the landlord and executed the lease in its own name, the tenant could not deny his landlord's title. Also, under these circumstances, the defendant could not deny he was the landlord and was liable for violation of the minimum service standard. *Goldberg* v. *Charles C. Koones & Co.* (D. C. Mun. App. 1949, 66 A. 2d 495).

Liability of landlord

The fact that tenant, as well as landlords, knowingly participated in arrangement for tenant's payment of more than ceiling rent was no defense to tenant's action against landlords for overcharges. *Zeppos* v. *Lewis* (D. C. Mun. App. 1954, 107 A. 2d 661).

In an action by tenant against landlord to recover rent overcharges, it is immaterial that tenant knew that he was being overcharged, since knowledge of tenant that he pays above ceiling rates does not make the payment legal or estop him to recover for the overcharge. *Grady* v. *Prewitt* (D. C. Mun. App. 1953, 99 A. 2d 755).

The right to collect for rent overcharges may be pursued against an owner who has actually received excessive rents. *Morning Star Lodge No. 40* v. *Harris* (D. C. Mun. App. 1953, 93 A. 2d 288).

A landlord which knew amount of rent being collected by its agent from whom tenant leased premises, and which directed agent to collect such amounts was liable for statutory rent overcharges, notwithstanding that for a very brief period the landlord may have been an undisclosed principal. *Id.*

That a tenant, as between himself and his subtenants, violated this chapter in collecting rentals not fixed by the Administrator, did not relieve the landlord from responsibility for complying with this chapter. *Hall* v. *Henry J. Robb* (D. C. Mun. App. 1944, 34 A. 2d 863).

Under § 45–1603 requiring for accommodations not rented during 1940 the rent and services generally prevailing for comparable accommodations, "as determined by the Administrator", an order by Administrator fixing maximum rent ceiling for particular premises effective March 16, 1943, was intended to apply only prospectively, and hence tenant could not recover excess of rent paid prior to effective date of order over ceiling fixed by Rent Administrator. *Dekelbaum* v. *Lloyd* (D. C. Mun. App. 1945, 41 A. 2d 174).

Although there can be no violation of a rent ceiling until such ceiling is established by Rent Administrator, landlord cannot willfully refuse to comply with Administrator's order directing an immediate filing of applications for determination of rent ceilings without subjecting himself to criminal liability. *Wilkerson* v. *Montgomery* (D. C. Mun. App. 1946, 47 A. 2d 102).

Where order of Rent Administrator fixing maximum rent ceiling on apartment was based on assumption that the ceiling was for furnished quarters, fact that tenant declined to use furniture in apartment and exercised her privilege of bringing into the apartment her own furniture would not show a violation of maximum rent ceiling by Administrator in charging maximum as fixed by Administrator's order. *Id.*

Where appellant bought a $10,000 property from stepfather with a down payment of only $300, followed by appellant's two suits seeking possession for personal use, and by extensive improvements, and the immediate rent-

ing of an apartment at a substantially higher rent, there was sufficient evidence to establish intent to evade this chapter. *Frankfurt* v. *District of Columbia* (D. C. Mun. App. 1949, 65 A. 2d 197).

Though in a possessory action, the rights of the parties and the condition of plaintiff's claim are to be tested by the facts as they existed on the day the suit was filed, the rule is different in a criminal prosecution in which the government alleged a device or arrangement with intent to evade this chapter. Such an offense would not necessarily be reflected in a single act or limited to a single day. *Id.*

Motion for summary judgment

In motion for summary judgment, it is not enough for an affiant to state that he has personal knowledge of the facts, but he must state the facts themselves in detail. The burden of establishing the non-existence of any genuine issue is upon the moving party. *Schwartz* v. *Sandidge* (D. C. Mun. App. 1949, 63 A. 2d 869).

Motion to dismiss

A motion to dismiss concedes all facts well pleaded and if the complaint states a cause of action, however loosely drawn it may be, it is not subject to dismissal. Such motion may ony be granted when it appears certain that the plaintiff would not be entitled to relief under any state of facts which could be proved in support of the claim. *Mancuso* v. *Santucci* (D. C. Mun. App. 1949, 69 A. 2d 274).

Nature of action

An action to recover double amount of excess rent collected in violation of this chapter, was not an action for a statutory "penalty or forfeiture" within bar of one year statute of limitations of section 201 of Title 12. *Heitmuller* v. *Berkow* (D. C. Mun. App. 1947, 51 A. 2d 302). See, also, *Heitmuller* v. *Berkow* (1948, 165 F. 2d 961, 83 U. S. App. D. C. 70, motion denied 171 F. 2d 741, 83 U. S. App. D. C. 342).

Action to recover for rent over-charges is not one in contract based on a lease, but one to recover a statutory obligation arising from an unlawful act. *Dunning* v. *Randall Hagner Co.* (D. C. Mun. App. 1949, 63 A. 2d 770).

New housing accommodations

Where housing accommodations rented at $70 per month on January 1, 1941, but in 1946 accommodations were so improved by repairs and construction as to constitute new accommodations and in 1950 landlord and tenant agreed upon rental of $180 per month, but landlord filed no application with Rent Administrator for determination of rent ceiling, the agreement was invalid leaving ceiling as it was on January 1, 1941, and landlord could not obtain possession because of non-payment of rent of $180 a month, and tenant could recover double excess charges. *Janifer* v. *Werner* (1952, 196 F. 2d 244, 90 U. S. App. D. C. 406).

A landlord applying for increase of established rent ceiling on ground of increase in operating cost and peculiar circumstances could not for the first time in action for overcharges assert that increase in rent was justified on ground of new housing accommodation. *Morning Star Lodge No. 40* v. *Harris* (D. C. Mun. App. 1953, 93 A. 2d 288).

New trial

In action for possession of premises for nonpayment of rent, wherein defendant counterclaimed for double an alleged overcharge in rent, trial court did not abuse discretion in refusing to grant a continuance of a hearing on a motion for new trial on order that defendant might successfully subpena a tenant of former owners of involved premises. *Janifer* v. *Werner* (D. C. Mun. App. 1951, 78 A. 2d 669, reversed on other grounds 196 F. 2d 244, 90 U. S. App. D. C. 406).

Orders reviewable

Where petitioner specifically requested Administrator to issue an order declaring a refund for over-charges, failure of the Administrator to bring suit is not reviewable on appeal when no objection was urged before the Administrator, no extraordinary circumstances were shown, and no reason shown why petitioner should not have filed suit himself. *Levy* v. *Arsenault* (D. C. Mun. App. 1949, 62 A. 2d 642).

Parties

Where, in action in Municipal Court for District of Columbia by first tenant against landlord to recover alleged rent overcharge, it appeared that first tenant and second tenant were cotenants of two apartments during part of time in question since they both had negotiated for renting of apartments and had shared rent, it was error to allow first tenant to recover second tenant's share of alleged overcharge, since such judgment would not preclude second tenant from later maintaining an independent action to recover alleged overcharge. *Bryant* v. *Abramowitz* (D. C. Mun. App. 1953, 96 A. 2d 44).

Where wife rented premises as a home for her husband and herself, and both husband and wife paid rent, both husband and wife were proper plaintiffs in action for double overcharge of rent, notwithstanding wife alone signed rental agreement. *Santucci* v. *Mancuso* (D. C. Mun. App. 1951, 78 A. 2d 671).

Fact that during a period of the tenancy rented premises were occupied not only by tenant but also by her "girl friend" and that the two shared the rental and expenses did not preclude tenant from bringing action to recover double amount of rent paid in excess of maximum rent ceiling prescribed by this chapter. *Tyler* v. *Dixson* (D. C. Mun. App. 1948, 57 A. 2d 648).

Occupancy by several tenants of a housing unit under separate agreements with landlord did not prevent them from joining in an action for violation of a rent ceiling when their combined payments exceeded maximum ceiling for housing unit. *Glassman* v. *Graver* (D. C. Mun. App. 1948, 56 A. 2d 160).

Penalties

This chapter provides means for enforcing violations of its provisions and to hold a landlord who has violated the chapter in one respect to be deprived of all rights under other provisions would be adding a new penalty not provided by statute. *Ostrow* v. *Horning, Inc.* (D. C. Mun. App. 1949, 69 A. 2d 277).

Prima facie case

In action by tenant against landlord to recover twice amount of alleged rental overcharges, wherein only question involved was whether legal rent at time of freeze date was $35 a month, as contended by tenant, or was $55 a month, as contended by landlord, and wherein tenant's wife testified that landlord admitted to her that former tenant occupied leased permises at monthly rental of $35, and wherein landlord testified that he did not make admission claimed by tenant's wife, court erred in ruling that tenant had not made out a prima facie case, and erred in granting landlord's motion for directed verdict. *Petty* v. *Rowe* (D.C. Mun. App. 1952, 91 A. 2d 331).

Question for jury

Implicit in rental formula for units rented on January 1, 1941, but improved so as to constitute new housing accommodations, under Act providing that maximum rent ceiling for housing accommodations not rented on January 1, 1941, nor within the year ending on that date, shall be rent and service generally prevailing for comparable housing accommodations and determined by Administrator, is need for factual determination by Administrator, after application by landlord, as to rent and service generally prevailing for comparable housing accommodations. *Janifer* v. *Werner* (1952, 196 F. 2d 244, 90 U. S. App. D. C. 406).

The question whether housing accommodations are new ones not rented on critical date under this chapter or are old ones with substantial capital improvements or alterations, is a question of fact, which, in tenant's action to recover double amount of excess rent, must, unless evidence is compelling one way or the other, be decided by jury. *Delsnider* v. *Gould* (1946, 154 F. 2d 844, 81 U. S. App. D. C. 54).

Whether landlord sued for rent overcharges created new housing accomodations which rendered inapplicable any pre-existing rent ceiling, by changing heating system, removing kitchen to another part of house, sealing off basement to tenant and subsequently re-decorating was a question for the trier of facts. *Morning Star Lodge No. 40* v. *Harris* (D.C. Mun. App. 1953, 93 A. 2d 288).

In tenant's suit for rent overcharges, under conflicting evidence as to amount of rental charged on statutory

freeze date, trial court did not err in granting relief sought. *Morski* v. *Murphy* (D. C. Mun. App. 1952, 85 A. 2d 806).

In action against owners of rooming house for penalty for depriving plaintiff of minimum service standards, and for damages for unlawful eviction, question of whether plaintiff was a roomer which would give landlords right to reasonable entry into plaintiff's room, or a tenant, was properly submitted to jury. *Lindsey* v. *Watson* (D.C. Mun. App. 1951, 83 A. 2d 226).

In tenant's suit against landlords to recover for certain alleged rental overcharges, whether landlords acted in good faith in collecting alleged above ceiling rental was properly submitted to jury. *Parker* v. *Williams* (D. C. Mun. App. 1951, 81 A. 2d 653).

In action for statutory double damages based on rent overcharges, question as to whether housing accommodations involved are new ones not rented on critical date or are old ones with substantial capital improvements or alterations is question of fact which must, unless evidence is compelling one way or other, be decided by jury. *Johnson* v. *Hawkins* (D. C. Mun. App. 1951, 81 A. 2d 467).

Whether real estate agent agreed to take care of everything necessary to establish rent ceiling was for jury. *Norris* v. *Rael* (D. C. Mun. App. 1946, 47 A. 2d 766).

Whether housing accommodations are new ones not rented on the critical date, or old ones with substantial capital improvements or alterations, is a question of fact which must be decided by the jury unless the evidence is compelling one way or another. *Id.*

In prosecution of landlord for failure to file an application for determination of maximum rent ceiling as required by an order of rent administrator, conflicting testimony that application was not received by administrator's office and was not on file and testimony of landlord that application was filed was for jury. *Watkins* v. *District of Columbia* (D. C. Mun. App. 1948, 60 A. 2d 227).

The question whether accommodations involved are new ones, or old ones with substantial capital improvement, is a question of fact for jury. *Sawyer* v. *Warner* (D. C. Mun. App. 1949, 63 A. 2d 653).

Question for trial court

In an action for rental overcharges, resolution of sharply conflicting testimony as to type of housing accommodations rented was for trial court. *Jones* v. *Clark* (D.C. Mun. App. 1955, 112 A. 2d 500).

Reduction of services

Even if place or person for receiving rent could be considered a service supplied in connection with use and occupancy of housing accommodations, landlord could designate a different agent to receive rent without being liable under subsection (a) of this section for reduced services. *Roumel* v. *Goldberg* (D. C. Mun. App. 1946, 46 A. 2d 114).

Finding that tenant had been denied service of a resident manager who would take charge of packages left for tenant in his absence, which service had been furnished tenant on freeze date under subsection (a) of this section, was insufficient to authorize tenant to recover damages from landlord for violation of service standard, in absence of further finding that such service was furnished to tenant on freeze date as a matter of right, and not gratuitously. *Id.*

Remedy as exclusive

A tenant may not minimize statutory liability for exceeding rent ceiling by suing for mere reimbursement, since statutory remedy is exclusive. *Moore* v. *Coates* (D. C. Mun. App. 1945, 40 A. 2d 68).

Repairs, recovery for

Where there was no agreement by landlord to repair, landlord's only duty was to maintain minimum service standard provided in this chapter, and tenant, upon claiming that landlord breached such duty in refusing to paint walls and refinish floors of apartment, was required to rely upon remedies provided by this section, and he could not make the repairs himself and then sue for twice their cost. *Goldberg* v. *Roumel* (D. C. Mun. App. 1946, 47 A. 2d 790).

In landlord's action for possession of rented apartment for failure of tenants to pay rent, wherein tenants counterclaimed for failure of landlord to repair refrigerator although refrigeration was a service standard prescribed by rent administrator, evidence sustained finding that landlord had inexcusably failed to supply refrigeration and that tenants were entitled to recover on their counterclaim as against contention that landlord was not notified of bad condition of refrigerator and did not refuse to repair. *Block* v. *Wilson* (D. C. Mun. App. 1948, 61 A. 2d 493).

Res judicata

Where, in prior action against member-tenant for possession of apartment in a cooperatively owned apartment house, issue of rent overcharge was considered and determined by a court having jurisdiction of the parties and subject matter, such determination would have to be considered a final adjudication and would, so long as judgment in the prior action remained unmodified, be res judicata on issue of overcharge in subsequent action between the same parties for double the overcharge. *Usher* v. *1015 N. Street, N. W. Cooperative Association, etc.* (D. C. Mun. App. 1956, 120 A. 2d 921).

Where, in prior action for possession of apartment in cooperatively owned apartment house for nonpayment of rent, member-tenant's contention that there had been an overcharge of rent was determined adversely to member-tenant, and judgment therein remained unmodified, such judgment, which was res judicata as to cooperative association, was also res judicata as to association's agents, who collected the rent, in subsequent action by member-tenant against association and the agents for double overcharges of rent for the apartment. *Id.*

Where tenants commenced proceedings before rent administrator to determine rent charged by landlord on freeze date but administrator made no affirmative finding on that issue and held that evidence failed to establish rent increase over that payable on freeze date or that premises were rented on freeze date, and dismissed petition administrator was without jurisdiction to determine that there had been an overcharge and dismissal was not res judicata of any issue in tenants' subsequent action before municipal court to recover for rent overcharges and failure to provide minimum services under this chapter. *Evans* v. *Schlein* (D. C. Mun. App. 1948, 61 A. 2d 32).

Where tenant's petition for rent refund was dismissed for lack of jurisdiction of relief sought, and Administrator had undertaken to make findings on some of the questions in controversy, such findings are without effect and are not res judicata in any other proceedings involving the question. *Levy* v. *Arsenault* (D. C. Mun. App. 1949, 62 A. 2d 642).

Where tenant sought an order restoring the services which had been withdrawn, or a corresponding reduction in rent, and failing to get either, then began present litigation seeking statutory damages for landlord's alleged refusal to furnish the services in question, he had no right to maintain suit because the issues had already been tried by the Administrator and determined against him. *Connolly* v. *B. F. Saul Co., Inc.* (D. C. Mun. App. 1949, 68 A. 2d 236).

Rescind, definition of

In this section, authorizing tenant to sue to rescind lease if landlord receives rent or refuses to render services as required by § 45–1601 et seq. or regulation thereunder, "rescind" must be given its commonly accepted meaning, so that, when tenant obtains rescission, lease is annulled and abrogated. *Friedman* v. *Kennedy* (D. C. Mun. App. 1945, 40 A. 2d 72).

Review

Where landlord sought possession of two apartments for default in rent and tenants counterclaimed for alleged overcharges of rent and trial court entered judgment for landlord and against tenants but tenants did not appeal, Rent Administrator, who had intervened in suits but was not party to judgments, could maintain independent appeal. *Cogswell* v. *Aiken* (D. C. Mun. App. 1951, 82 A. 2d 749).

Set off

Where rent ceilings for certain apartments had been fixed on an unfurnished basis, and thereafter landlord furnished and rented the apartments at above ceiling rates without having first obtained furnished ceiling

rates, and tenants brought actions against landlord to recover overcharges, landlord was not entitled to set off against tenants' claims a fair rental for use of furniture, since to allow landlord to collect additional amount for use of furniture would constitute an evasion of this chapter. *Grady* v. *Prewitt* (D. C. Mun. App. 1953, 99 A. 2d 755).

Service standard

Under this section giving tenant entitled to a minimum service standard right of action against landlord for double value of "services refused" in violation of applicable minimum service standard, a refusal need not be explicit, and a repeated failure to perform a duty may be equivalent to a refusal. *Lupin* v. *G. M. P. Corp.* (D.C. Mun. App. 1951, 83 A. 2d 323).

Where inside repairs were included within the minimum service required to be maintained by landlord, existence of water leak in shower stall for over six months after notice of leak and failure to repair leak was tantamount to a refusal to do so, and tenant was entitled to an award under this section. *Id.*

The word "entitled" in provision of subsection (a) of this section and § 45–1602 authorizing tenant to recover damages from landlord upon proof of failure to furnish minimum service standard to which tenant was entitled on freeze date under this chapter, means having a right to, and indicates that service standard consists only of services tenant was entitled to as of right on freeze date, and not those which were furnished gratuitously or as a matter of courtesy. *Roumel* v. *Goldberg* (D. C. Mun. App. 1946, 46 A. 2d 114).

In order to entitle tenant to recover damages from landlord for violation of minimum service standard under subsection (a) of this section and § 45–1602, such service need not be specifically contracted for in lease or rental agreement. *Id.*

Where apartment contained a refrigerator at time of rental to defendants, and administrator in determining rent for apartment, also determined that rent was based upon a minimum service standard including repairs, landlord was required to keep refrigerator in repair regardless of agreement relieving landlord of duty to keep refrigerator in repair. *Block* v. *Wilson* (D. C. Mun. App. 1948, 61 A. 2d 493).

Where tenant claimed that there was a violation of the service standard because the furniture in her apartment was not of the value indicated by the landlord, it is the furniture and not the value of it which constitutes the service. The tenant should have applied to the administrator for a reduction in rent as she is permitted to do if she felt the apartment did not warrant the maximum rent. *Astin* v. *Phillips* (D. C. Mun. App. 1949, 66 A. 2d 690).

Where tenants of an apartment house sued their landlord for damages for his alleged refusal to render services as required by the applicable minimum service standard, the evidence supported a finding that those services applied only to those rented on a daily or hotel basis and not to tenants' apartments. *Id.*

There was substantial evidence to support the view that the minimum service standard for the premises included the making of repairs to the roof by the landlord, and there was also substantial evidence to support the view that the repairs were refused. *Bond* v. *Pinchot* (D. C. Mun. App. 1949, 66 A. 2d 213).

There was ample evidence in the record to support trial court's findings that landlord refused to supply the services requested, i. e., heat, hot water and maintenance of the apartment in habitable conditions. *Block* v. *Gates* (D. C. Mun. App. 1949, 68 A. 2d 215, modified on other grounds 68 A. 2d 898).

A tenant is under no duty and generally has no right to attempt to repair those parts of a central system outside his own apartment. *Goldberg* v. *Charles C. Koones & Co.* (D. C. Mun. App. 1949, 66 A. 2d 495).

To have a refusal of services, the landlord must have some knowledge of the need for the services and an opportunity to furnish them. *Bischoff* v. *Person* (D. C. Mun. App. 1950, 73 A. 2d 716).

Standard of recovery

Tenants must rely on this chapter for their remedies and consequently they must also rely on it for their standard of recovery. *Mancuso* v. *Santucci* (D. C. Mun. App. 1949, 69 A. 2d 274).

Statute of limitations

The rule is well settled in this jurisdiction that a suit under this chapter for the recovery of rent overcharges is governed by the general three-year limitation contained in § 12–201, as an action, the limitations of which is not otherwise specially prescribed. *Lustine* v. *Williams* (D. C. Mun. App. 1949, 68 A. 2d 900).

Stipulations as to evidence

In landlord's suit for possession of apartment for alleged nonpayment of rents, where tenant filed counterclaim for double damages based on rent overcharges, stipulation by landlord's counsel in open court, to effect that if check dated during month of August 1950, endorsed by landlord in sum of $70 was presented to court such check should be entered in evidence and allowed as proof of payment of August 1950 rent, was binding upon landlord, and landlord would not be entitled to credit for nonpayment of rent for such month after such check had been introduced in evidence. *Johnson* v. *Hawkins* (D. C. Mun. App. 1951, 81 A. 2d 467).

In action brought by tenants for double overcharge of rent, trial court properly failed to give effect to a stipulation entered in a previous action involving same subject matter, in view of fact that stipulation related to future proceedings in prior action, and since attempted enforcement of stipulation would have resulted in further delay of a matter which had already been in court too long, and since nonenforcement of stipulation did not prevent defendant who was party to stipulation from making available defenses. *Santucci* v. *Mancuso* (D. C. Mun. App. 1951, 78 A. 2d 671).

Sufficiency of evidence

In suit to recover damages for rental overcharges for premises alleged to have been rented for residential purposes, evidence supported finding that premises had been used and were rented as physician's offices and were not subject to this chapter. *Weinstein* v. *Rodger Corp.* (D.C. Mun. App. 1952, 90 A. 2d 827).

Evidence on issue of whether repair and renovation of one of three common bathrooms, and whether keeping a window closed with shade drawn to keep out sun's heat, were reasonable or a deprivation of minimum service standards was sufficient to sustain verdict for owners. *Lindsey* v. *Watson* (D.C. Mun. App. 1951, 83 A. 2d 226).

In landlord's suit for possession of apartment for alleged nonpayment of rent, where tenant filed counterclaim for statutory double damages based on rent overcharges, evidence was not so compelling as to require trial judge to rule that case of new housing accommodations had been made out by landlord as matter of law. *Johnson* v. *Hawkins* (D. C. Mun. App. 1951, 81 A. 2d 467).

Evidence justified landlord's recovery of rented premises on ground that they were rented for office purposes and were being used by tenant for living purposes, and denial of the tenant's counterclaim on ground that rent charged on a commercial basis was illegal under this chapter because the premises constituted "housing accommodations," within the meaning of § 45–1611. *De Bobula* v. *Winston* (D. C. Mun. App. 1948, 57 A. 2d 742).

Evidence authorized conviction of landlord of violating this chapter by willfully violating order of rent administrator requiring the filing of an application for determination of a maximum rent ceiling. *Watkins* v. *District of Columbia* (D. C. Mun. App. 1948, 60 A. 2d 227).

Evidence sustained finding that there had been no failure on part of landlord to render minimum services under this chapter to apartment tenant seeking damages. *Zindler* v. *Buchanon* (D. C. Mun. App. 1948, 61 A. 2d 616).

Where, on statutory freeze date, service supplied by landlords included, among other things, window shades, refrigerator, and repairs inside and outside, and the uncontradicted evidence showed that landlords had refused to furnish window shades or refrigerator and had failed or refused to do any decorating or to make other essential repairs, a prima facie case was made out by tenant that he was entitled to some damages, if no more than the $50 named in this section. *Baker* v. *Rosen* (D. C. Mun. App. 1948, 58 A. 2d 687).

Question whether repairs or remodeling constitute new housing is ordinarily a question of fact. *Lustine* v. *Williams* (D. C. Mun. App. 1949, 68 A. 2d 900).

Where landlord acted on claim that the premises, when rented at the lowest figure, were unfurnished, whereas they were rented furnished to the tenant and that the furnished premises were new accommodations not subject to the old rent ceiling and further, where tenant disputed this, claiming that the furniture never belonged to the landlord but was formerly owned by a previous tenant, trial court was justified in finding either that the furniture was not supplied by the landlord or if it was, that its addition did not result in new accommodations. *Turner* v. *Bowman* (D. C. Mun. App. 1949, 68 A. 2d 231).

Where trial judge ruled as a matter of law that there had been no substantial change or alteration so as to constitute new accommodations, such ruling is substantiated where the findings of fact are supported by the evidence. *Cummings* v. *Peters* (D. C. Mun. App. 1949, 66 A. 2d 516).

A refusal of services need not be explicit, and a repeated failure to perform a duty may be equivalent to a refusal. *Bischoff* v. *Person* (D. C. Mun. App. 1950, 73 A. 2d 716),

Third party practice

Where a third party defendant was not served with notice of the motion for summary judgment, such a defendant was deprived of no rights by such failure and cannot complain. Court properly exercised its discretion in passing on the motion. *Schwartz* v. *Sandidge* (D. C. Mun. App. 1949, 63 A. 2d 869).

Waiver of objections

In suit by landlord to recover possession of apartment for non-payment of rent, where tenant counterclaimed for statutory double damages based on rent overcharges, landlord waived objections to counterclaim by not making timely challenge in trial court, and his challenge of counterclaim for first time on motion for new trial was too late. *Johnson* v. *Hawkins* (D. C. Mun. App. 1951, 81 A. 2d 467).

Willful violation

To establish a "willful" violation of this chapter, only proof of a knowing violation is required, and specific proof of malice or bad purpose is not contemplated. *Watkins* v. *District of Columbia* (D. C. Mun. App. 1948, 60 A. 2d 227).

§ 45–1611. Definitions.

As used in this chapter—

(a) The term "housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes in the District of Columbia, together with all services supplied in connection with the use or occupancy of such property; but the term "housing accommodations" shall not include (1) any of the accommodations in a hotel in which more than 60 per centum of the units devoted to living quarters for tenants and guests are used for furnishing accommodations for transients, or the building constituting such hotel; or (2) furnished non-housekeeping accommodations, whether or not in a hotel, which are rented as rooms without kitchen privileges or facilities for cooking (but not in a suite of two or more rooms); or (3) any building used as a licensed rooming house.

(b) The term "services" includes the furnishing of light, heat, hot and cold water, telephone, elevator service, furnishings, furniture, window shades, screens, awnings, and storage, kitchen, bath, and laundry facilities and privileges, maid service, janitor service, the removal of refuse, and the making of all repairs suited to the housing accommodations or necessitated by ordinary wear and tear, and any other privilege or facility connected with the use or occupancy of housing accommodations.

(c) The term "rent" means the consideration, including any bonus, benefit, or gratuity, demanded or received per day, week, month, year, or other period of time as the case may be, for the use or occupancy of housing accommodations or the transfer of a lease for such accommodations.

(d) The term "maximum-rent ceiling" means the maximum rent which may be demanded or received for the use or occupancy of housing accommodations or the transfer of a lease for such accommodations.

(e) The term "minimum-service standard" means the minimum service which may be supplied in connection with the renting or leasing of housing accommodations.

(f) The term "tenant" includes a subtenant, lessee, sublessee, or other person entitled to the use or occupancy of any housing accommodations.

(g) The term "landlord" includes an owner, lessor, sublessor, or other person entitled to receive rent for the use or occupancy of any housing accommodations.

(h) The term "person" includes one or more individuals, firms, partnerships, corporations, or associations and any agent, trustee, receiver, assignee, or other representative thereof.

(i) The term "documents" includes leases, agreements, records, books, accounts, correspondence, memoranda, and other documents, and drafts and copies of any of the foregoing. (Dec. 2, 1941, 55 Stat. 794, ch. 553, § 11; June 30, 1951, 65 Stat. 106, ch. 192, § 1.)

Amendment

1951—Act June 30, 1951, amended subsection (a) generally. Prior to said amendment, subsection provided that "The term 'housing accommodations' means any building structure or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes in the District of Columbia (including, but without limitation, houses, apartments, hotels, rooming- or boarding-house accommodations, and other properties used for living or dwelling purposes) together with all services supplied in connection with the use or occupancy of such property."

Effective Date of 1951 Amendment

Amendment of section by act June 30, 1951, effective July 1, 1951, see § 2 of act June 30, 1951, set out as a note under § 45–1601.

NOTES TO DECISIONS

Animals on premises

Where tenants brought their dogs into building after effective date of this chapter, right to keep dogs on leased premises was neither a "privilege" nor a "facility" within this chapter, and therefore this chapter did not preclude landlord from exercising right under lease to revoke permission to keep dogs. *Mee* v. *Marlyn Apartment Co.* (D.C. Mun. App. 1943, 31 A. 2d 864).

The right to keep a dog in leased premises was neither a "privilege" nor a "facility" within this chapter, and therefore this chapter did not preclude landlord from exercising right under lease to revoke permission to keep dog. *Shay* v. *Randall H. Hagner & Co.* (D. C. Mun. App 1944, 38 A. 2d 617).

Counterclaims

This chapter permitting landlord to petition Rent Administrator for increased rentals based upon operating costs, or capital improvements or alterations, is exclusive, and landlord sued for penalty on account of exaction of rent in excess of ceiling could not maintain counterclaim for rental value of furnishings of apartment. *Norris* v. *Rael* (D. C. Mun. App. 1946, 47 A. 2d 766).

Decontrolled exceptions

Rooming houses including establishments classified as lodging houses for certain purposes, were decontrolled so that a leased building, known as hotel, but operating under lodginghouse license, containing nonhousekeeping furnished rooms, and accommodating both transient and permanent guests, was not subject to rent control. *Zeppos et al.* v. *Lewis* (D.C. Mun. App. 1954, 107 A. 2d 661).

It is the actual use of premises, together with landlord's knowledge of or acquiescence in such use, that determines whether or not the decontrol provisions of this chapter apply. *Kelley* v. *Hinnant* (D. C. Mun. App. 1953, 97 A. 2d 339).

The burden rests on landlord to prove that building is within a decontrolled exception to this chapter. *Id.*

Landlords suing for possession of leased housing accommodations as not subject to this chapter have burden of proving that building involved is within decontrolled exception of such chapter. *Bernstein* v. *Lime* (D.C. Mun. App. 1952, 91 A. 2d 841).

Housing accommodations

The term "housing accommodations" in this chapter means composite of rented realty, personal property, and appurtenances thereto and services connected therewith. *Miller* v. *Boan* (1955, 218 F. 2d 854, 95 U.S. App. D.C. 43).

Grouping of two housing accommodations, consisting of furnished basement and upper floors of house, as subject matter of one lease to single tenant, did not destroy character of two separate parts of house or create new housing accommodation, so that monthly rent ceiling fixed for entire building while unfurnished, was not only rent ceiling for whole premises and higher monthly rent in combined amount of ceilings subsequently fixed for basement and combined upper floors, respectively, was not illegal overcharge. *Id.*

Where lease provided that tenant was to operate leased property as licensed rooming house, and any building used as licensed rooming house was exempt from this chapter, tenant paying $100 monthly instead of $50 monthly rent in force on freeze date could not recover overcharges in absence of evidence as to whether property was being put to any different use than that prescribed in lease. *Kelley* v. *Hinnant* (D. C. Mun. App. 1953, 97 A. 2d 339).

This section, excluding furnished nonhousekeeping accommodations rented as rooms without kitchen privileges from definition of term "housing accommodations" subject to control, eliminated rent ceilings on rooms rented without such privileges in a building, though building itself was not being used as rooming house, but did not discontrol entire building, while clause excluding any building used as licensed rooming house from such definition removed entire building so used from control. *Bernstein* v. *Lime* (D. C. Mun. App. 1952, 91 A. 2d 841).

In landlords' action for possession of leased housing accommodations, alleged to be a licensed rooming house, trial court properly instructed jury that plaintiffs must prove not only that building involved was licensed rooming house, but also show that it was used as such. *Id.*

A building leased to one who rented rooms therein with housekeeping privileges to persons given exclusive control thereof was not a rooming house, though license permitting its use as such was issued; housing accommodations being under exclusive control of occupants. *Id.*

Exemptions from operation of this chapter must be narrowly construed, giving due regard to plain meaning of language thereof and Congress' intent. *Id.*

Under this chapter, the use of the premises as housing accommodations determines whether chapter is to apply. *Weinstein* v. *Rodger Corp.* (D. C. Mun. App. 1952, 90 A. 2d 827).

In suit to recover damages for rental overcharges for premises alleged to have been rented for residential purposes, evidence supported finding that premises had been used and were rented as physician's offices and were not subject to this chapter. *Id.*

Under this chapter, whether property is commercial or residential and controlled, is ordinarily a question of fact to be determined by giving due weight to whether premises have been used for commercial or residential purposes, to prior leases, acts of parties, and time over which landlord-tenant relationship has existed, to whether a commercial portion is incidental to dwelling portion or whether property is primarily commercial with dwelling accommodation incident thereto, and whether the two portions can be and have been used independently of each other. *Id.*

Leased property, used and operated by hold-over tenant as rooming house, constituted "housing accommodations" within this chapter, so as to preclude landlord from recovering possession of property for purpose of continuing such operation, though tenant was operating establishment as business for profit and did not personally live in house. *Lingo* v. *Wolfe* (D. C. Mun. App. 1944, 37 A. 2d 270).

Business property not used for dwelling purposes was not governed by this chapter. *J. & J. Slater, Inc.* v. *Brainerd* (D. C. Mun. App. 1945, 43 A. 2d 714).

Where premises rented on critical date under this chapter, was a frame building described as a "shack", and after that date a new owner installed water, plumbing and electricity and a bathroom with tub and overhanging shower, finished walls, installed electric refrigerator and electrically controlled kerosene furnace, rebuilt front entrance, planted flowers in yard and made repairs and completely furnished the house except for silver and linen, the completely equipped and furnished house was a new "housing accommodation" within § 1602 (1) which was not rented on critical date so that ceiling rent was the rent generally prevailing for comparable housing accommodations. *Delsnider* v. *Gould* (1946, 154 F. 2d 844, 81 U. S. App. D. C. 54).

Where apartment in rear of first floor could not be rented or used conveniently except in connection with use of front room occupied by barber shop, and was never separately rented, but first floor was treated as a unit, rent being based primarily upon commercial use of the barber shop, second floor which was continuously used for dwelling and had separate entrance, but not first floor was within subsection (a) of this section. *Ridolfi* v. *Benton* (D. C. Mun. App. 1948, 58 A. 2d 723).

The definition of housing accommodations seems plainly to prescribe that the use of the premises shall determine whether the Rent Act is to apply and this seems to be the test even though the property is zoned for commercial use. When so zoned, it must be used commercially to be free from the control of the Rent Act. *White* v. *Allen* (D. C. Mun. App. 1950, 70 A. 2d 252).

Landlord

A landlord which knew amount of rent being collected by its agent from whom tenant leased premises, and which directed agent to collect such amounts was liable for rent overcharges, notwithstanding that for a very brief period the landlord may have been an undisclosed principal. *Morning Star Lodge No. 40* v. *Harris* (D. C. Mun. App. 1953, 93 A. 2d 288).

Where testator devised an apartment building in trust to three trustees, including testator's daughter, to manage the apartment building and pay one half of net income to testator's daughter, and after testator's death, daughter and *her* brother occupied apartments in the building rent free, the daughter could not, in her individual capacity, maintain an action under the rent act against a tenant in possession to recover possession of an apartment on ground that she required it for her personal use for a dwelling, since she was not a "landlord." *Thomas* v. *Williams* (D. C. Mun. App. 1952, 84 A. 2d 702).

One who purchased an apartment in co-operative building and pursuant thereto acquired stock in corporate owner of building and a proprietary lease for 99 years with right of 100-year renewals was a "landlord" within subsection (g) of this section and was entitled to maintain suit for possession of her apartment for own personal use. *Hicks* v. *Bigelow* (D. C. Mun. App. 1948, 55 A. 2d 924).

Under subsection (g) of this section the person suing for possession need not be the owner of a fee simple title, but it is sufficient if the plaintiff is the landlord. *Mancuso* v. *Santucci* (D. C. Mun. App. 1948, 60 A. 2d 697).

This chapter contains no express reference to the United States as a landlord or to the application of the Act to government-owned housing of any kind, and does not apply to government housing in the District. *United States* v. *Wittek* (1949, 69 S. Ct. 1108, 337 U. S. 346, 93 L. Ed. 1406).

Evidence entitles the purchaser of perpetual use and equity contract to the rights of a landlord within this chapter when the substantial nature of these rights rather than the form of the transaction is considered. *Abbot* v. *Bralove* (D.C.D.C. 1949, 81 F. Supp. 532).

The defendant purchasers of a cooperative apartment, because of their proprietary rights, voice in the management of the building, voice in any proposed sale or mortgage of the property, plus the exclusive right to perpetual occupancy of an apartment in the dwelling, and other facts of ownership, are landlords within the definitions contained in this chapter. *Id.*

Person

Religious corporation which furnished free food and shelter to its students was a "person" and was capable of using house for "occupancy as a dwelling" within provision of § 45–1605 authorizing a landlord to recover possession from a tenant if he seeks in good faith to recover possession for his immediate and personal use and occupancy as a dwelling. *Hoffman* v. *Apostolic Works* (D. C. Mun. App. 1945, 43 A. 2d 848).

A defendant signing lease as agent for undisclosed landlord and contracting therein for payment of overceiling rent was a "person" against whom tenant could bring action for overceiling rent under §45–1610. *Mayer* v. *Buchanan* (D. C. Mun. App. 1947, 50 A. 2d 595).

Where broker is authorized to receive rent for landlord, he is a "person" within meaning of this section and liable to tenant for over-charges, and it is no defense that he is not a party to the lease. *Dunning* v. *Randall Hagner Co.* (D. C. Mun. App. 1949, 63 A. 2d 770).

Rent

In tenant's action for overcharges by lessor furnishing room and board, whether increase in rent related to meals alone, so as to preclude recovery, was for jury under conflicting testimony. *Barnabo* v. *Lewis* (D. C. Mun. App. 1951, 81 A. 2d 659).

An increase in charge for room and board, representing increase in charge for meals alone, would not violate this chapter and court properly so instructed jury in action for overcharge. *Id.*

Landlord's contention that monthly payments were paid under an agreement for the right to sub-let is untenable. The payments constitute rent because the subletting was a use of the apartment and anything paid for such use constitutes rent. *Perper* v. *Danford* (D. C. Mun. App. 1949, 63 A. 2d 773).

Making a security deposit in connection with the rental of housing accommodations constitutes both a detriment to the tenant and a benefit to the landlord within the classical definition of consideration and is within the term "rent." *Block* v. *Gates* (D. C. Mun. App. 1949, 66 A. 2d 215, modified on other grounds 68 A. 2d 898).

Right to possession

Where plaintiff sued for possession of property purchased at foreclosure sale, against defendant who had previously owned the property but had defaulted on the second trust note, the defense that, when the deed to trust was foreclosed, defendants automatically became tenants at will under § 45–822 and could not be ousted by reason of § 45–1605, is not applicable as the property did not constitute housing accommodations within the meaning of § 45–1611. *Surratt* v. *Real Estate Exchange, Inc.* (D. C. Mun. App. 1950, 76 A. 2d 587).

Services

Meals furnished by lessor are not "services" within contemplation of this section, and are not subject to this chapter. *Barnabo* v. *Lewis* (D. C. Mun. App. 1951, 81 A. 2d 659).

Tenant

A lessee who has sued to rescind lease is not a "person entitled to the use or occupancy" of premises within definition of "tenant" in this chapter, and hence cannot retain possession. *Friedman* v. *Kennedy* (D. C. Mun. App. 1945, 40 A. 2d 72).

A tenant who had sublet the leased premises and was not in possession thereof, although entitled to possession, was a "tenant" within meaning of this chapter and was entitled to the protection thereof until dispossessed by the landlord. *Hall* v. *Henry J. Robb, Inc.* (D. C. Mun. App. 1944, 34 A. 2d 863).

Where tenant terminated tenancy by notice acceptable to landlord but tenant's estranged wife remained in possession after lease was terminated, she was no longer "entitled" to occupancy within meaning of subsection (f) of this section. *Scott* v. *H. G. Smithy Co.* (D. C. Mun. App. 1947, 53 A. 2d 45).

The occupant of one room in a house for whom owners provided furnishings, linens, towels, and daily maid service was a "roomer" and not a "tenant". *Tamamian* v. *Gabbard* (D. C. Mun. App. 1947, 55 A. 2d 513).

The fact that occupancy relates to one room only is not decisive as to whether occupant is a "roomer" or a "tenant", since tenancy may exist with respect to a single room. *Id.*

Unit for rent ceilings

The unit for which a rent ceiling is fixed by this chapter is not the real estate or the premises but the combination of real estate, all personal property, all facilities and all services connected with the use or occupancy and for which rent was payable. *Delsnider* v. *Gould* (1946, 154 F. 2d 844, 81 U. S. App. D. C. 54). See, also, *James* v. *Noorbolm* (D. C. Mun. App. 1946, 47 A. 2d 105).

Chapter 17.—SERVICEMEN'S READJUSTMENT

Sec.
45–1701. Disability of minority removed—Investment by building associations.
45–1702. Direct-reduction loans authorized.

§ 45–1701. Disability of minority removed—Investment by building associations.

(a) The disability of minority of a resident of the District of Columbia who is eligible for guaranty of a loan pursuant to the Servicemen's Readjustment Act of 1944 (58 Stat. L. 284) and of a minor spouse of any such resident (when acting jointly with such resident) is hereby removed with respect to the incurring of any obligation all or part of which is guaranteed under the provisions of said chapter or in conjunction with which a secondary loan is so guaranteed, and with respect to the exercise of the rights of ownership in any property acquired with the proceeds of any such obligation, including the right to sell, convey, lease, encumber, improve or maintain the same and to further obligate himself incident to his exercise of such rights.

(b) Notwithstanding any other provision of law, any building association or building and loan association or any savings and loan association, incorporated or unincorporated, organized and operating under the laws of the District of Columbia, or any Federal savings and loan association whose main office is in the District of Columbia, may invest its funds in: (1) Property-improvement loans insured or insurable under title I of the National Housing Act; (2) loans to veterans of World War II when guaranteed in whole or in part by a loan guaranty certificate issued under the Servicemen's Readjustment Act of 1944, including, without limitation, such loans as are unsecured and such loans as are junior to another mortgage or lien upon the security; and (3) other secured or unsecured loan for property alteration, repair, or improvement or for home equipment: *Provided,* That no such unsecured loan not insured or guaranteed by a Federal agency shall be made in excess of $2,000: *Provided further,* That the total amount loaned or invested and held in unsecured loans not insured or guaranteed by a Federal agency as provided for under

this subsection at any one time shall not exceed 15 per centum of the association's assets. (May 1, 1946, 60 Stat. 159, ch. 245, § 2.)

REFERENCES IN TEXT

Servicemen's Readjustment Act of 1944, was repealed by act June 17, 1957, Pub. L. 85–86, 71 Stat. 83. See 38 U.S.C. § 1501 et seq.

Title I of the National Housing Act, referred to in the text, is classified to 12 U.S.C. § 1702 et seq.

SHORT TITLE

Section 1 of act May 1, 1946, provided that: "That this Act [this chapter] may be cited as the 'District of Columbia Servicemen's Readjustment Enabling Act of 1945'."

TRANSFER OF FUNCTIONS

Reorg. Order No. 32 of the Board of Commissioners dated April 30, 1953 established under the direction and control of the Engineer Commissioner, a Veterans' Service Center headed by a Director. The new Veterans' Service Center is to perform the functions previously assigned to the Division of Services to Veterans (including the previously existing D. C. Veterans' Service Center). The order abolished the previously existing Division of Services to Veterans (including the previously existing D. C. Veterans' Service Center). This order was issued pursuant to Reorg. Plan No. 5 of 1952. The order and plan are set out in the Appendix to title 1, Administration.

§ 45–1702. Direct-reduction loans authorized.

Any building association, building and loan association, or savings and loan association organized and operating under the laws of the District of Columbia, is authorized to lend money to veterans of World War II and others upon the security of a first deed of trust or first mortgage upon real estate, to be repaid in monthly or quarterly payments to be applied first to interest and the balance to principal until the indebtedness is paid in full, and without subscription to, or ownership of any shares. and such loans shall be known as direct-reduction loans. Direct-reduction-loan borrowers, and all persons assuming or obligated under direct-reduction loans made or held by such association shall be members of the association, and at all meetings of the members of the association, each borrower or each obligor upon a direct-reduction loan shall be entitled to one vote as such member. (May 1, 1946, 60 Stat. 159, ch. 245, § 3.)

TITLE 46.—SOCIAL SECURITY

Chap. Sec.

1. Care of Blind 46–101
2. Old-age Assistance 46–201
3. Unemployment Compensation 46–301

Chapter 1.—CARE OF BLIND

§§ 46–101 to 46–116. Repealed. Oct. 15, 1962, 76 Stat. 919, Pub. L. 87–807, § 24.

Sections 1 to 16 of act Aug. 24, 1935, 49 Stat. 744, ch. 639, related to the care of needy blind persons. They authorized and directed the D.C. Commissioners to enforce the provisions of the sections, to make rules and regulations, defined the term, "needy blind person," prescribed the eligibility requirements for assistance, the form of the application, the amount of benefits, appeal from denial of aid, provided that blind persons receiving aid were not to solicit alms, discontinued aid to blind persons who moved from the District, denied benefits to capable persons who refused to work or who refused to submit to treatment, allowed no benefits to persons intentionally destroying their eyesight, made certain relatives liable for the support of the blind person, allowed the recoupment of benefits paid from the estate of the recipient, prescribed penalties for fraudulently obtaining aid, provided for liberal construction of the sections and included the usual implementing provisions. The subject is now covered by Title 3, chapter 2.

EFFECTIVE DATE

See note to section 3–201.

SAVINGS PROVISIONS

Section 24, act Oct. 15, 1962, provided in part as follows: "Notwithstanding such repeal, all claims of the District of Columbia for recovery of amounts expended for aid or assistance granted under such repealed Acts [46–101 to 46–116] which it now has, or which would have accrued had such Acts not been repealed, shall be recoverable in the same manner and to the same extent as such amounts would be recoverable had such aid or assistance been granted under the provisions of this Act." [Title 3, chapter 2.]

Chapter 2.—OLD-AGE ASSISTANCE

§§ 46–201 to 46–215. Repealed. Oct. 15, 1962, 76 Stat. 919, Pub. L. 87–807, § 24.

Sections 1 to 15 of act Aug. 24, 1935, 49 Stat. 748, ch. 640, related to old-age assistance to needy persons. The sections defined the term "assistance", outlined the eligibility requirements of needy persons for assistance, designated the D.C. Commissioners the administrator of the program, directed them to prescribe and print the forms of application, to make rules and regulations, authorized them to determine the amount of assistance and the manner thereof, provided that old age benefits were non-assignable and not subject to levy or execution, authorized payment of reasonable funeral expenses on death of a recipient, directed investigations to be made of applications for old-age assistance, provided for periodical review of assistance payments and the making of adjustments and suspensions where necessary, prescribed penalties for fraud in procuring assistance, designated the relatives who would be liable for the support of a needy old person, authorized the recoupment of benefits paid from the estate of recipient and included the usual implementing provisions. The subject matter is now covered by Title 3, chapter 2.

EFFECTIVE DATE

See note to section 3–201.

SAVINGS PROVISIONS

Section 24, act Oct. 15, 1962, provided in part as follows: "Notwithstanding such repeal, all claims of the District of Columbia for recovery of amounts expended for aid or assistance granted under such repealed Acts [sections 46–201 to 46–215] which it now has, or which would have accrued had such Acts not been repealed shall be recoverable in the same manner and to the same extent as such amounts would be recoverable had such aid or assistance been granted under the provisions of this Act." [Title 3, chapter 2.]

Chapter 3.—UNEMPLOYMENT COMPENSATION

Sec.

46–301. Definitions.
46–302. District Unemployment Fund.
46–303. Employer contributions.
46–303a. Employer contributions by the District of Columbia.
46–304. Method of paying employer contributions.
46–305. Service on nonresident employers.
46–306. Deposit in unemployment trust fund.
46–307. Amount and duration of benefits.
46–308. Method of paying benefits.
46–309. Eligibility for benefits.
46–310. Disqualification for benefits.
46–311. Determination of claims.
46–312. Court review.
46–313. Administration.
46–314. Method of paying administrative expenses.
46–315. District Unemployment Compensation Board.
46–316. Reciprocal arrangements.
46–317. Records and reports.
46–318. Protection of rights and benefits.
46–319. Penalties.
46–320. Disposition of fines.
46–321. Representation in court.
46–322. All audits by District Auditor.
46–323. Right to amend or repeal reserved.
46–324. Separability of provisions.
46–325. Short title.
46–326. Commissioners of the District of Columbia.

§ 46–301. Definitions.

As used in this chapter, unless the context indicates otherwise—

(a) The term "employer" means every individual and type of organization for whom services are performed in employment;

(b) (1) "Employment" means any service performed prior to the effective date of this chapter which was employment as defined in this chapter prior to such date, and subject to the other provisions of this subsection, service performed on and after the effective date of this chapter, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) The term "employment" shall include an individual's entire service, performed within or both within and without the District if—

(A) the service is localized in the District; or

(B) the service is not localized in any State but some of the service is performed in the District

and (i) the individual's base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in the District; or (ii) the individual's base of operations or place from which such service is directed or controlled is not in any State in which some part of the service is performed but the individual's residence is in the District.

Service shall be deemed to be localized within a State if—

(i) the service is performed entirely within such State; or

(ii) the service is performed both within and without such State, but the service performed without such State is incidental to the individual's service within the State, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Services covered by an arrangement pursuant to section 46–316 between the Board and the agency charged with the administration of any other State or Federal unemployment compensation law, pursuant to which all services performed by an individual for an employer are deemed to be performed entirely within the District, shall be deemed to be employment if the Board has approved an election of the employer for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be employment for an employer.

(4) Notwithstanding any other provisions of this subsection, the term employment shall also include all service performed after January 1, 1955 by an officer or member of the crew of an American vessel on or in connection with such vessel, provided that the operating office, from which the operations of such vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed, and controlled, is within the District.

(5) The term "employment" shall not include—

(A) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(B) casual labor not in the course of the employer's trade or business;

(C) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(D) service performed in the employ of the United States Government or of an instrumentality of the United States which is (a) wholly owned by the United States, or (b) exempt from the tax imposed by section 1600 of the Internal Revenue Code of the United States (26 U. S. Code) or by virtue of any other provision of law: *Provided,* That, in the event that the Congress of the United States, on or before the date of the enactment of the chapter, has permitted or in the event that the Congress of the United States shall permit States to require any instrumentalities of the United States to make contributions to an unemployment fund under a State unemployment compensation law, then, to the extent so permitted by Congress, and from and after the date as of which such permission becomes effective, or January 1, 1940, whichever is the later, all of the provisions of this chapter shall be applicable to such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employees, individuals, and services: *Provided further,* That if the District of Columbia should not be certified by the Social Security Board under section 1603 of the Internal Revenue Code (26 U. S. Code) for any year, the payments required of any instrumentality of the United States or its employees with respect to such year shall be refunded by the District Unemployment Compensation Board in accordance with the provisions of section 46–304 (i): *Provided, however,* That any employer required to make retroactive payment of any contributions shall be given thirty days from October 17, 1940, within which to make such retroactive payments without incurring any penalty for the late payment of such contributions and all interest charges shall commence one month from October 17, 1940;

(E) service performed in the employ of the District, or of any other State, or of any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by the District or by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of the District or of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, exempt under the Constitution of the United States from the tax imposed by section 1600 of the Federal Internal Revenue Code (26 U. S. Code);

(F) service performed in the employ of a Senator, Representative, Delegate, or Resident Commissioner, insofar as such service directly assists him in carrying out his legislative duties;

(G) service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious or charitable purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(H) service with respect to which unemployment compensation is payable under any other unemployment compensation system established by an Act of Congress;

(I) (1) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101 of the Internal Revenue Code of the United States (26 U. S. Code), if—

(a) the remuneration of such service does not exceed $45; or

(b) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association; or

(c) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;

(2) service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1) of the Internal Revenue Code of the United States (26 U. S. Code);

(3) service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (i) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (ii) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(4) service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (i) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (ii) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual;

(5) service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101 of the Internal Revenue Code of the United States (26 U. S. Code), if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed $45 (exclusive of room, board, and tuition);

(J) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(K) service performed in the employ of an instrumentality wholly owned by a foreign government—

(1) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(2) if the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(L) service performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;

(M) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(N) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(O) service covered by an arrangement between the Board and the agency charged with the administration of any other State or Federal unemployment compensation law pursuant to which all services performed by an individual for an employer during the period covered by such employer's duly approved election are deemed to be performed entirely within such agency's State;

(P) service performed by an individual for a person as a real-estate salesman, real-estate solicitor, or real-estate agent, if all of such service performed by such individual for such person is performed for remuneration solely by way of commission.

(Q) service performed on or in connection with a vessel not an American vessel by an individual if he performed service on and in connection with such vessel when outside the United States;

(R) service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except (A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and (B) service performed on or in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);

(S) service performed in the employ of a Senator, Representative, Delegate, Resident Commissioner or any organization composed solely of a group of the foregoing, insofar as such service is in connection with political matters.

(6) INCLUDED AND EXCLUDED SERVICE.—If the services performed during one-half or more of any pay period by an individual in employment for the person employing him constitute employment, all the services of such individual in employment for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an individual in employment for the person employing him do not constitute employment, then none of the services of such individual in employment for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the individual in employment by the person employing him. This subsection shall not be applicable with respect to services performed in a pay

period by an individual in employment for the person employing him, where any of such service is excepted by paragraph 5 (H) of subsection (b).

(7) Notwithstanding any of the provisions of subsection (b) (5) of this section, services shall be deemed to be in employment if with respect to such services a tax is required to be paid under any Federal law imposing a tax against which credit may be taken for contributions required to be paid into a State unemployment compensation fund.

(c) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Gratuities customarily received by an individual in the course of his employment from persons other than his employer shall be treated as wages received from his employer. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with the regulations prescribed by the Board, except that such term "wages" shall not include—

(8) (i) Any service performed for an employing unit, which is excluded under the definition of employment in subsection (b) (5) and with respect to which no payments are required under the employment security law of another State or of the Federal Government may be deemed to constitute employment for all purposes of chapter: *Provided,* That the Board has approved a written election to that effect filed by the employing unit for which the service is performed, as of the date stated in such approval. No election shall be approved by the Board unless it (A) includes all the service of the type specified in each establishment or place of business for which the election is made, and (B) is made for not less than two calendar years.

(ii) Any service which, because of an election by an employing unit under subsection (b) (8) (i), is employment subject to this chapter shall cease to be employment subject to the chapter as of January 1 of any calendar year subsequent to the two calendar years of the election, only if not later than March 15 of such year, either such employing unit has filed with the Board a written notice to that effect, or the Board on its own motion has given notice of termination of such coverage.

(iii) Notwithstanding the provisions of subsection (b) (2) of this section, service performed in the employ of the municipal government of the District of Columbia but not localized within the District may, if said government elects, be covered employment.

(1) the amount of any payment with respect to services performed on and after the effective date of this chapter, made to, or on behalf of, an individual in its employ under a plan or system established by an employer which makes provision for such individuals generally or for a class or classes of such individuals (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization, expenses in connection with sickness or accident disability, or (D) death, provided such individual (i) has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contribution to premiums) paid by his employer, and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(2) the payment by an employer (without deduction from the remuneration of the individual in employment) (A) of the tax imposed upon an individual in its employ under section 1400 of the Internal Revenue Code (26 U. S. Code); or

(3) dismissal payments on and after the effective date of this chapter, which the employer is not legally required to make.

(d) "Earnings" means all remuneration payable for personal services, including wages, commissions, and bonuses, and the cash value of all remuneration payable in any medium other than cash whether received from employment, self-employment, or any other work. Gratuities received by an individual in the course of his work shall be treated as earnings. The reasonable cash value of any remuneration payable in any medium other than cash, and a reasonable amount of gratuities shall be estimated and determined in accordance with the regulations prescribed by the Board.

(e) An individual shall be deemed "unemployed" with respect to any week during which he performs no services and with respect to which no earnings are payable to him, or with respect to any week of less than full-time work if the earnings payable to him with respect to such week are less than his weekly benefit amount.

(f) "Base period" means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year.

(g) The term "benefits" means the money payments to an individual, as provided in this chapter, with respect to his unemployment.

(h) "Benefit year" with respect to any individual means the fifty-two consecutive-week period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the fifty-two consecutive-week period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his last preceding benefit year. Any claim for benefits made in accordance with section 46–311 shall be deemed to be a "valid claim" for the purposes of this subsection if the individual has during his base period been paid wages for employment by employers as required by the provisions of section 46–307.

(i) The term "computation date" means the 30th day of June of each year as of which rates of contributions are determined for the next following cal-

endar year, except that the first computation date under the provisions of this chapter shall be the last day of the third calendar quarter immediately preceding the effective date of this chapter, as of which rates of contribution, commencing with the effective date of this chapter, are determined for the remainder of that calendar year.

(j) The term "Board" means the District Unemployment Compensation Board established by section 46–315.

(k) "Calendar quarter" means the period of three consecutive months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Board may by regulation prescribe.

(*l*) The term "District" means the District of Columbia.

(m) "Employment office" means a free public employment office or branch thereof operated by this or any other State as a part of a State-controlled system of public employment offices or by a Federal agency or any agency of a foreign government charged with the administration of an unemployment-insurance program or free public employment offices.

(n) The term "month" means calendar month; except as the Board may otherwise prescribe.

(*o*) The term "week" means the calendar week or such period of seven consecutive days as the Board may by regulation prescribe.

(p) "Fund" means the District unemployment fund established by section 46–302, to which all contributions required and from which all benefits provided under this chapter shall be paid.

(q) "State" includes, in addition to the States of the United States of America, Alaska, Hawaii, and the District of Columbia (herein referred to as the "District").

(r) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has, or subsequent to January 1, 1936, had, in its employ one or more individuals performing services for it within the District.

(s) The phrase "dependent relative" means a spouse, mother, father, stepmother, stepfather, brother, or sister, who, because of age or physical disability, is unable to work, or a child under sixteen years of age, or a child who is unable to work because of physical disability, who is wholly or mainly supported by the individual receiving the benefit. For the purposes of this subsection the term "child" shall mean any son, daughter, stepson, or stepdaughter, regardless of age, whom the claimant is morally obligated to support.

(t) The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew performs service solely for one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

(u) The term "principal base period employer" means the employer that paid a claimant the greatest amount of wages used in the computation of his claim. In the event two or more employers paid the claimant identical amounts, the employer in such group for whom the claimant most recently worked shall be the principal base period employer.

(v) The term "insured work" means employment for employers. (Aug. 28, 1935, 49 Stat. 946, ch. 794, § 1; Feb. 13, 1936, 49 Stat. 1138, ch. 68; June 23, 1936, 49 Stat. 1888, ch. 726, § 9; June 25, 1938, 52 Stat. 1112, ch. 680, § 14(a); Apr. 22, 1940, 54 Stat. 149, ch. 127, § 1; July 2, 1940, 54 Stat. 730, ch. 524, § 1; Oct. 17, 1940, 54 Stat. 1204, ch. 898, title I, § 1; June 4, 1943, 57 Stat. 100, ch. 117; Aug. 31, 1954, 68 Stat. 988, ch. 1139, § 1; July 25, 1956, 70 Stat. 643, ch. 724, § 1; July 25, 1958, 72 Stat. 417, Pub. L. 85–557, § 1; Mar. 30, 1962, 76 Stat. 46, Pub. L. 87–424, §§ 1, 2.)

REFERENCES IN TEXT

Sections 1600, 1603 of the Internal Revenue Code of the United States (26 U.S.C.), referred to in subsec. (b)(5)(D); section 1600 of the Federal Internal Revenue Code (26 U.S.C.), referred to in subsec. (b)(5)(E); section 101, 101(1) of the Internal Revenue Code of the United States (26 U.S.C.), referred to in subsec. (b)(5)(I)(1), (b)(5)(I)(2), (b)(5)(I)(5); and section 1400 of the Internal Revenue Code (26 U.S.C.), referred to in subsec. (c)(2), are references to section 101, 101(1), 1400, 1600, 1603 of the Internal Revenue Code, 1939, which were repealed by section 1 of act Aug. 16, 1954, 68A Stat. 915, ch. 736, set out as U. S. Code, title 26 (I. R. C. 1954), § 7851, and are covered by 26 U.S.C. §§ 501, 502, 521, 522, 3101, 3301, 3304 (I.R.C. 1954). For provision deeming a reference in other laws to a provision of I.R.C. 1939, also as a reference to corresponding provision of I.R.C. 1954, see section 1 of act Aug. 16, 1954, 68A Stat. 916, ch. 736, set out as 26 U.S.C. § 7852 (I.R.C. 1954).

Section 2 of act July 2, 1940, provided that:

"(a) As used in this section unless the context clearly requires otherwise—

"(1) 'old law' means the unemployment-compensation law prior to its amendment by this title [amendment of sections 46–301, 46–303, 46–304, 46–307, 46–309, 46–313];

"(2) 'new law' means the unemployment-compensation law as amended by this title [amendment of sections 46–301, 46–303, 46–304, 46–307, 46–309, 46–313];

"(3) 'effective date [see Effective Date of 1940 Amendments, note hereunder] means the date upon which the new law becomes effective; and

"(4) 'continuous period of compensable unemployment' means a period of unemployment beginning prior to continuing up to and after the effective date [see Effective Date of 1940 Amendments, note hereunder] in the case of an individual who, prior to the effective date, has filed a claim for benefits for a week or weeks of unemployment in such period: *Provided,* That the individual has satisfied the requirements of paragraph 2 of subsection (a) of section 10 of the old law [section 46–309] and has not exhausted his rights to benefits pursuant to subsection (b) of section 8 of the old law [section 46–308] prior to the effective date.

"(b) Except as otherwise specifically provided in subsection (c) of this section, the new law shall be exclusively applicable with respect to any individual on and after the effective date. No provision of the old law shall be construed to limit or extend the rights of any individual as fixed by the new law, after the new law becomes exclusively applicable with respect to such individual as provided in this section.

"(c) With respect to any individual who is unemployed during a continuous period of compensable unemployment (as defined in paragraph 4 of subsection (a) of this section) sections 1 (d), 8 (a) (insofar as it relates to the determination of the weekly benefit rate for total unemployment), 8 (b), 8 (c), 8 (d), and 10 (a) (2) of

the old law shall be exclusively applicable until the expiration of such continuous period of compensable unemployment.

"(d) Upon application by an employer, filed pursuant to suitable regulations by the Board, the Board shall determine the extent to which the employer's contributions paid for the first six months of the calendar year 1940 were in excess of his contributions due for said period under the new law and shall make an adjustment for that amount, without interest, solely in connection with subsequent contributions by him."

AMENDMENTS

1962—Act Mar. 30, 1962, amended subsection (b)(5)(G) by striking out "religious, charitable, scientific, literary, or educational purposes" and inserting in lieu thereof "religious or charitable purposes" and by adding subsection (v) thereto.

1958—Subsec. (b)(5)(S) added by act July 25, 1958.

1956—Subsec. (b)(8)(iii) added by act July 25, 1956.

1954—Subsec. (b)(2)(B) amended by act Aug. 31, 1954, which added the provisions relating to localized service formerly found in former subsec. (b)(4).

Subsec. (b)(4) added by act Aug. 31, 1954. Former subsec. (b)(4) relating to localized service reclassified as a par. of subsec. (b)(2)(B).

Subsec. (b)(5)(Q), (R) added by act Aug. 31, 1954.

Subsec. (b)(7),(8) added by act Aug. 31, 1954.

Subsec. (c) amended by act Aug. 31, 1954, which repealed par. (1) reading "That part of the remuneration which, after remuneration equal to $3,000 has been paid to any individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year and after December 31, 1939;" and redesignated as pars.

(1)—(3) former pars. (2)—(4).

Subsec. (h) amended by act Aug. 31, 1954, which substituted "section 46–311" for "section 46–311(b)" and "as required by the provisions of section 46–307" for "equal to not less than whichever is the lesser of (1) twenty-five times his weekly benefit amount, and (2) $250."

Subsec. (m) amended by act Aug. 31, 1954, which redefined an employment office by substituting: "operated by this or any other State as a part of a State-controlled system of public employment offices or by a Federal agency or any agency of a foreign government charged with the administration of an unemployment-insurance program or free public employment offices" for "operated by the Social Security Board or by any department or agency of the United States or by any department or agency of the District of Columbia or any free public employment office maintained as a part of a State-controlled system of public employment offices".

Subsecs. (t), (u) added by act Aug. 31, 1954.

1943—Subsec. (a) amended by act June 4, 1943, to include the District within the definition of employer and to substitute "in employment" for "under a contract of employment."

Subsec. (b) amended by act June 4, 1943, which substituted the present provisions for "The term 'employment' means any service, of whatever nature, including employment in interstate commerce, performed after December 31, 1935, within the United States, by any individual under any contract of hire, oral or written, express or implied, so long as the greater part, as determined by the Board under regulations prescribed by it, of the service performed under such contract is performed within the District, except—

"(1) domestic service in a private home;

"(2) casual labor not in the course of the employer's trade or business;

"(3) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one, in the employ of his father or mother;

"(4) service performed in the employ of the United States Government or of an instrumentality of the United States;

"(5) service performed in the employ of a Senator, Representative, Delegate, or Resident Commissioner, insofar as such service directly assists him in carrying out his legislative duties; and

"(6) service performed in the employ of the District as a school officer or teacher, or as a member of the police or fire department, or by an individual who is subject to the Act entitled 'An Act for the retirement of employees in the classified Civil Service, and for other purposes', approved May 22, 1920, as amended;

"(7) service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

"(8) service performed in the employ of an employer as defined in the Railroad Unemployment Insurance Act and service performed as an employee representative as defined in said Act."

Subsec. (c) amended by act June 4, 1943, which substituted the present definition of wages for "The term 'wages' means all remuneration for employment, including the cash value, as determined by the Board under regulations prescribed by it, of all remuneration paid in any medium other than cash. Whenever gratuities are received by an individual in the course of his employment from persons other than his employer, the Board, under regulations prescribed by it, shall determine the average amount of such gratuities generally received by individuals performing services of that nature, and the amount so determined shall, for the purpose of the contributions required and the benefits provided under this chapter, be included as part of the wages of such individual: *Provided,* That such term 'wages' shall not include that part of the remuneration which, after remuneration equal to $3,000 has been paid to any individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year and after December 31, 1939."

Subsec. (d), formerly (f), so redesignated by act June 4, 1943. Former subsec. (d) redesignated (h).

Subsec. (e) amended by act June 4, 1943, which substituted "An individual shall be deemed 'unemployed' with respect to any week during which he performs no services and with respect to which no earnings are payable to him, or with respect to any week of less than full-time work if the earnings payable to him with respect to such week are less than his weekly benefit amount" for "An individual shall be deemed unemployed in any week during which no earnings are payable to him, or in any week of less than full-time work if the earnings payable to him with respect to such week are less than his weekly benefit amount."

Subsec. (f), formerly (o), so redesignated by act June 4, 1943. Former subsec. (f) redesignated (d).

Subsec. (g), formerly (j), so redesignated by act June 4, 1943 and amended by substituting "money payments to an individual, as provided in this chapter, with respect to his unemployment" for "payments to unemployed individuals provided for in section 46–307." Former subsec. (g) redesignated (s).

Subsec. (h), formerly (d), so redesignated by act June 4, 1943, and amended by substituting "section 11(b) of this Act" for "section 12(a) of this Act", codified in the text as "section 46–311(b)" for "section 46–311(a)." Former subsec. (h) redesignated (j).

Subsec. (i) added by act June 4, 1943. Former subsec. (i) redesignated (*l*).

Subsec. (j), formerly (h), so redesignated by act June 4, 1943. Former subsec. (j) redesignated (g).

Subsec. (k) added by act June 4, 1943. Former subsec. (k) redesignated (o).

Subsec. (*l*), formerly (i), so redesignated by act June 4, 1943. Former subsec. (*l*) redesignated (n).

Subsec. (m), formerly (n), so redesignated by act June 4, 1943, and amended by substituting "operated by the Social Security Board or by any department or agency of the United States or by any department or agency of the District of Columbia or any free employment office maintained as a part of a State-controlled system of public employment offices" for "in the District or elsewhere. Former subsec. (m) had provided that "The phrase 'Un-

employment Trust Fund' means the Unemployment Trust Fund established by section 1104 of title 42, U.S. Code."

Subsec. (n), formerly (*l*), so redesignated by act June 4, 1943, and amended by substituting "except as the Board may otherwise prescribe" for "except that for the purpose of computing the contributions payable with respect to any calendar month, and for that purpose only, such calendar month shall be deemed, if, and to the extent that individuals are paid on a weekly basis, to be the period covered by all the weeks which commence within such calendar month." Former subsec. (n) redesignated (m).

Subsec. (*o*), formerly (k), so redesignated by act June 4, 1943, and amended by substituting "calendar week or such period of seven consecutive days as the Board may by regulation prescribe" for "period commencing at 12:01 o'clock ante meridian Sunday and ending at 12 o'clock midnight the following Saturday." Former subsec. (o) redesignated (f).

Subsecs. (p)—(r) added by act June 4, 1943.

Subsec. (s), formerly (g), so redesignated by act June 4, 1943, and amended by inclusion of spouse in the definition of dependent relative and the definition of child.

1940—Subsec. (b)(4) amended by act Oct. 17, 1940, which added the provisions following "service performed in the employ of the United States Government or of an instrumentality of the United States."

Subsec. (b)(9) added by act Apr. 22, 1940.

Subsec. (b)(10) added by act July 2, 1940.

Subsec. (c) amended by act July 2, 1940, to add proviso.

Subsec. (d) amended by act July 2, 1940, which substituted: " 'Benefit year' with respect to any individual means the fifty-two-consecutive-week period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the fifty-two-consecutive-week period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his last preceding benefit year. Any claim for benefits made in accordance with section 46–311(a) shall be deemed to be a 'valid claim' for the purposes of this subsection if the individual has during his base period been paid wages for employment by employers equal to not less than whichever is the lesser of (1) twenty-five times his weekly benfit amount, and (2) $250." for "The phrase 'weekly wage' as applied to any individual who has been engaged in employment for at least thirty hours in each of twenty-six or more weeks within the period of one hundred and four weeks ending with the week in which such individual was last engaged in employment, means the sum obtained by dividing the total of the wages earned in all the weeks within such period in which he was engaged in employment at least thirty hours by the number of such weeks; and, as applied to any individual who has not been engaged in employment for at least thirty hours in each of twenty-six or more weeks within such period of one hundred and four weeks, means the sum obtained by dividing the total of the wages earned in such period by the total number of weeks within such period in which he was engaged in employment."

Subsec. (e) amended by act July 2, 1940, which substituted "An individual shall be deemed unemployed in any week during which no earnings are payable to him, or in any week of less than full-time work if the earnings payable to him with respect to such week are less than his weekly benefit amount" for "The phrase 'totally unemployed' means that the individual concerned has performed in the particular week no services whatsoever for which remuneration (of any nature whatsoever) is payable, has not engaged in any self-employment, and is found by the Board to have been unable to engage in any self-employment in which he was formerly engaged."

Subsec. (f) amended by act July 2, 1940, which substituted " 'Earnings' means all remuneration payable for personal services, including wages, commissions, and bonuses and the cash value of all remuneration payable in any medium other than cash whether received from employment, self-employment, or any other work. Gratuities received by an individual in the course of his work shall be treated as earnings. The reasonable cash value of any remuneration payable in any medium other than cash, and a reasonable amount of gratuities shall be estimated and determined in accordance with the regulations prescribed by the Board." for "The phrase 'partially unemployed' means that the individual concerned has failed to earn in the particular week remuneration (of any nature whatsoever) of at least $2 more than the benefit he would be entitled to receive under this chapter with respect to such week if totally unemployed and otherwise eligible.

Subsec. (g) amended by act July 2, 1940, to insert ", or a child who is unable to work because of physical disability" following "sixteen years of age."

Subsec. (n) amended by act July 2, 1940, which substituted "or elsewhere" for "operated by the United States Employment Service."

Subsec. (o) added by act July 2, 1940.

1938—Subsec. (b)(8) added by act June 25, 1938.

1936—Subsec. (b) amended by acts June 23, 1936, and Feb. 13, 1936. Act June 23, 1936, substituted in paragraph (7) "a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals" for "the following: All religious institutions and schools maintained by them; colleges or universities." Act Feb. 13, 1936, had added such paragraph (7).

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 10 of act Mar. 30, 1962, provided as follows: "The amendments made by this Act [amending sections 46–301, 46–303, 46–307, 46–309, and 46–310] shall take effect on the first day of the first calendar quarter which begins after the date of enactment of this Act" [Mar. 30, 1962].

EFFECTIVE DATE OF 1958 AMENDMENT

Section 2 of act July 25, 1958, provided that: "This Act [amending sections 46–304, 46–319] shall take effect on the first day of the next succeeding calendar quarter following the enactment of this Act [July 25, 1958] except that the amendment to section 1(b)(5)(S) [Subsec. (b)(5)(S) of this section] shall be retroactive to January 1, 1936. No refund may be made because of any retroactive provision in this Act [amending subsec. (b)(5)(S) of this section and sections 46–304 and 46–319]."

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act July 25, 1956, provided that: "This amendatory Act [adding subsec. (b)(8)(iii)] shall take effect as of 12:01 ante-meridian on the first day of the next succeeding calendar quarter following the enactment of this amendatory Act [July 25, 1956]."

EFFECTIVE DATE OF 1954 AMENDMENT

Section 3 of act Aug. 31, 1954, provided that: "This Act [adding section 46–326 and amending sections 46–301, 46–303, 46–304, 46–307, 46–310, 46–313 to 46–315, 46–319] shall take effect Jan. 1, 1955."

EFFECTIVE DATE OF 1943 AMENDMENT

Section 25 of act Aug. 28, 1935, amended by act June 4, 1943, provided that: "This Act [amending this chapter] shall take effect as of 12:01 antemeridian on the first day of the next succeeding calendar quarter following the enactment of this Act [this chapter]."

EFFECTIVE DATE OF 1940 AMENDMENTS

Section 2 of act Oct. 17, 1940, provided in part that the amendment of subsec. (b)(4) by section 1 of act Oct. 17, 1940, should be effective Jan. 1, 1940.

Section 3 of title I of act July 2, 1940, provided that: "This title [amending sections 46–301, 46–303, 46–304, 46–307, 46–309 and 46–313 and enacting provisions set out as a note under this section] shall take effect as of 12:01 antemeridian, July 1, 1940."

Section 2 of act Apr. 22, 1940, provided that: "This amendment [adding subsec. (b)(9) shall be effective January 1, 1940."

EFFECTIVE DATE OF 1938 AMENDMENT

Section 14(a) of act June 25, 1938, provided in part that the addition of subsec. (b)(8) by act June 25, 1938, should be effective July 1, 1939.

TRANSFER OF FUNCTIONS

The functions of the Social Security Board in the Federal Security Agency were transferred to the Federal Security Administrator to be performed by him or under his direction and control by such officers and employees of the Federal Security Agency as he should designate and the Social Security Board was abolished by section 4 of 1946 Reorg. Plan No. 2, transmitted May 16, 1946 and made effective July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, by act Dec. 20, 1945, 59 Stat. 613, ch. 582.

The Federal Security Agency was established, the Federal Security Administrator was designated as the head of the Agency, and the Social Security Board and its functions were consolidated with other agencies and their functions under the Federal Security Agency to be administered as a part of such Agency under the direction and supervision of the Administrator, by sections 201, 202 of 1939 Reorg. Plan No. I, transmitted Apr. 25, 1939, and made effective July 1, 1939, 4 F.R. 2727, 53 Stat. 1423, by act June 7, 1939, 53 Stat. 813, ch. 193, § 1.

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, upon the issuance of Proc. No. 3269, Jan. 5, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, upon the issuance of Proc. No. 3309, Aug. 25, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85–508, July 7, 1958, 72 Stat. 339, set out as a note preceding 48 U.S.C. § 21. For Hawaii Statehood Law, see Pub. L. 86–3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding 48 U.S.C. § 491.

TRANSITION PROVISIONS

Section 2 of act Aug. 31, 1954, provided that:

"(a) As used in this section, unless the context clearly requires otherwise—

(1) 'old law' means the unemployment compensation law prior to its amendment by this Act [Aug. 31, 1954];

(2) 'new law' means the unemployment compensation law as amended by this Act [Aug. 31, 1954]; and

(3) 'effective date [see Effective Date of 1954 Amendment not hereunder]' means the date upon which the new law becomes effective.

(b) The benefit rights of any individual having a benefit year current on or after the effective date shall be redetermined and benefits for calendar weeks ending subsequent to the effective date shall be paid in accordance with the new law: *Provided,* That no claimant shall have his benefits reduced or denied by redetermination resulting from the application of this provision. All initial and continued claims for benefits for weeks occurring within a benefit year which commences on or after the effective date shall be computed and paid in accordance with the new law."

UNEMPLOYMENT BENEFITS PRIOR TO JULY 1, 1939

Section 14(a) of act June 25, 1938, provided in part that: "This amendment [adding subsec. (b)(8) shall not be construed to affect the payment of unemployment benefits at any time with respect to any period prior to July 1, 1939, based upon employment performed prior to July 1, 1939."

RETROACTIVE PAYMENTS

Section 2 of act Oct. 17, 1940, provided in part: "That any employer required to make retroactive payment of any contributions shall be given thirty days from the enactment of this Act [Oct. 17, 1940] within which to make such retroactive payments without incurring any penalty for the late payment of such contributions and all interest charges shall commence one month from the date of the enactment of this Act [Oct. 17, 1940]."

CROSS REFERENCE

Railroad unemployment insurance account in unemployment trust fund, transfer of funds from District of Columbia account in unemployment trust fund to, see 45 U.S.C. § 364.

NOTES TO DECISIONS

Charitable or educational organization

Girl Scouts is an organization operated for "charitable purposes" within Unemployment Compensation Law exempting establishments operated exclusively for charitable purposes, the word "charity" being broader than relief of the needy or poor, and including a large group of activities for betterment of individuals or of the entire community. *National Capital Girl Scout Council etc.,* v. *District Unemployment Compensation Board etc., et al.* (D.C.D.C., 1964, 231 F. Supp. 546).

The word "exclusively" within Unemployment Compensation Law exempting establishments organized and operated exclusively for religious or charitable purposes means "primarily" or "principally" or "in large part." *Id.*

The National Capital Girl Scout Council is not primarily or principally an educational establishment and hence is entitled to be exempt from unemployment insurance provision of District of Columbia Code exempting establishments organized and operated exclusively for religious or charitable purposes. *Id.*

In excepting from this chapter service performed in the employ of a corporation, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, etc., Congress included every nonprofit organization designed and operating for the benefit and enlightenment of the community, the State or the Nation, or those organizations commonly designated "charitable" in the law of trusts. *International Reform Federation* v. *District Unemployment Compensation Board* (1943, 131 F. 2d 337, 76 U. S. App. D. C. 282, certiorari denied 63 S. Ct. 324, 317 U. S. 693, 87 L. Ed. 555).

In the enactment of this chapter it was within discretion of Congress to include charitable or educational institutions on the same terms as business or social organizations or if it included the former, to limit in such way as Congress thought proper the enjoyment of the preferred position, and the language of this section evinces a clear purpose to exclude charitable or educational institutions without limiting the enjoyment of their preferred positions and all that is requisite under this section is that the institution claiming exemption shall be organized and operated exclusively for one of the named purposes. *Id.*

In order to be classified as a "charitable corporation" entitled to exemption from payment into fund under this chapter, it is not necessary that corporation's principal objective be to provide for the poor, the sick and the needy. *Id.*

The International Reform Federation whose principal purpose and activities were promotion of sociological reform, suppression of gambling and political corruption, substitution of arbitration and conciliation for both industrial and international war, suppression of the white slave traffic, harmful drugs and kindred evils, was exempt as a "charitable or educational corporation" from the chapter, and was not affected by incidental political activities. *Id.*

Where New York corporation formed for improvement of its members in marksmanship, and to promote introduction of system of rifle practice as part of military drill of National Guard, and to provide suitable range, was organized under McKinney's N. Y. membership corporations law, for incorporation of societies for social and recreative purposes, the corporation was not "organized exclusively for religious, charitable, scientific, literary or educational purposes" within this section exempting corporation organized for such purposes from liability for unemployment contributions. *National Rifle Ass'n of America* v. *Young* (1943, 134 F. 2d 524, 77 U. S. App. D. C. 290).

In determining whether corporation is organized and operated exclusively for religious, charitable, scientific, literary or educational purposes within exemption clause in this section, recourse must be had to its charter and the statute under the authority of which it was organized. *Id.*

A corporation, whose object in part, as indicated by its charter, was for the mutual welfare, protection, and improvement of business methods among merchants and for protecting the interests of certain classes of businesses to enable them to profitably conduct their business, was not exempt as organized exclusively for "educational or scientific purposes" from this chapter, notwithstanding corporation's purposes were to be accomplished by educational methods. *Better Business Bureau of Washington, D. C.* v. *District Unemployment Compensation Board* (D. C. Mun. App. 1943, 34 A. 2d 614).

Construction

Exemptions from taxation in general, and especially exemptions from unemployment contributions under this chapter, are to be strictly construed. *National Rifle Ass'n of America* v. *Young* (1943, 134 F. 2d 524, 77 U. S. App. D. C. 290).

This chapter should be liberally construed to accomplish their purposes and extend their coverage with consequent strict construction of exemption provisions of this section. *Better Business Bureau of Washington, D. C.* v. *District Unemployment Compensation Board* (D. C. Mun. App. 1943, 34 A. 2d 614).

The contributions required by this chapter are "taxes", and exemptions from such taxes are strictly construed. *Id.*

—— With other laws

In ascertaining whether a corporation organized under § 29–601 relating to benevolent, charitable, educational, and similar corporations was exempt from this chapter, said section must be considered but said section cannot be conclusive in face of specific objects selected by corporation for inclusion in its charter. *Better Business Bureau of Washington, D. C.* v. *District Unemployment Compensation Board* (D. C. Mun. App. 1943, 34 A. 2d 614).

Determination of exemption

To come within exemption of this section, corporation must be organized and operated exclusively for one or more of named purposes, and, though its primary purpose is within exemption, it cannot have benefit thereof if it has other purposes beyond scope of exemption. *Better Business Bureau of Washington, D. C.* v. *District Unemployment Compensation Board* (D. C. Mun. App. 1943, 34 A. 2d 614).

Employer

Where defendant operated a barber shop under a contract with a navy club and had complete responsibility for employment and payment of assistants and the club received ten percent of the gross income and defendant retained the balance, defendant was an "employer" within the District of Columbia Unemployment Compensation Act and liable for contributions thereunder. *Sokol t/a etc.* v. *McLaughlin et al.* (D. C. Mun. App. 1959, 147 A. 2d 766).

Purpose

Where this section exempted service performed in the employ of a corporation, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, without including the limitation that no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, which appeared in other laws, intent of Congress was to make the exception apply where the primary and exclusive purpose was religious, charitable or educational. *International Reform Federation* v. *District Unemployment Compensation Board* (1943, 131 F. 2d 337, 76 U. S. App. D. C. 282, certiorari denied 63 S. Ct. 324, 317 U. S. 693, 87 L. Ed. 555).

§ 46–302. District Unemployment Fund.

(a) There is hereby established the District unemployment fund, as a special deposit in the Treasury of the United States, into which shall be paid all contributions received or collected pursuant to this chapter and from which shall be paid all benefits and refunds provided for under this chapter. The fund shall consist of three separate accounts: (1) A clearing account, (2) an unemployment-trust-fund account, and (3) a benefit account, and be managed and controlled by the Board in the manner provided in this chapter, and the Board shall keep complete and accurate accounts of the status of the fund and shall include a statement of such status in its yearly report to Congress. (Aug. 28, 1935, 49 Stat. 947, ch. 794, § 2; June 4, 1943, 57 Stat. 105, ch. 117.)

AMENDMENT

1943—Act June 4, 1943, amended the section by providing for special deposit in the United States Treasury and the three accounts.

§ 46–303. Employer contributions.

(a) Each employer who employs one or more individuals in any employment shall for each month, beginning with the month of January 1936 and ending December 31, 1939, pay contributions equal to the following percentages of the total wages payable (regardless of the time of payment) with respect to such employment by him during such month:

(1) With respect to employment during the calendar year 1936, the rate shall be 1 per centum;

(2) With respect to emp'oyment during the calendar year 1937, the rate shall be 2 per centum;

(3) With respect to employment during the calendar years 1938 and 1939, the rate shall be 3 per centum.

(b) Each employer shall pay contributions equal to 2.7 per centum of wages paid by him during the calendar year 1940 and thereafter, until the effective date of this chapter, with respect to employment after December 31, 1939.

(c) FUTURE RATES BASED ON BENEFIT EXPERIENCE.—

(1) The Board shall maintain a separate account for each employer, and shall credit his account with all of the contributions paid by him after June 30, 1939, with respect to employment subsequent to May 31, 1939. Each year the Board shall credit to each of such accounts having a positive reserve on the computation date, the interest earned from the Federal Government in the following manner: Each year the ratio of the credit balance in each individual account to the total of all the credit balances in all employer accounts shall be computed as of such computation date, and an amount equal to the interest credited to the District's account in the unemployment trust fund in the Treasury of the United States for the four most recently completed calendar quarters shall be credited prior to the next computation date on the pro rata basis to all employers' accounts having a credit balance on the computation date. Such amount shall be prorated to the individual accounts in the same ratio that the credit balance in each individual account bears to the total of the credit balances in all such accounts. In computing the amount to be credited to the account of an employer as a result of interest earned by funds on deposit in the unemployment trust fund in the Treasury of the United States to the account of the District, any voluntary contribution made by an employer after June 30 of any year shall not be considered a part of the account balance of the employer until the next computation date occurring after such voluntary contribution was made. Nothing in this chapter shall be construed to grant any employer or individual in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such individuals.

(2) Benefits paid to an individual with respect to any week of unemployment which was based on an initial claim filed after June 30, 1939, and before July 1, 1940, shall be charged against the account of his

most recent employer. Benefits paid to an individual on an initial claim for benefits filed after June 30, 1940, shall be charged against the accounts of his base period employers. The amount of benefits so chargeable against each base period employer's account shall bear the same ratio to the total benefits paid to an individual as the base period wages paid to the individual by such employer bear to the total amount of the base period wages paid to the individual by all of his base period employers. The principal base period employer shall be notified of each payment of benefits to a claimant at the time of such payment.

(3) The standard rate of contributions payable by each employer shall be 2.7 per centum.

(4) (i) No employer's rate of contribution for any calendar year or part thereof shall be reduced below the standard rate unless and until his account could have been charged with benefits paid throughout the thirty-six-consecutive-calander-month period ending on the computation date applicable to such year or part thereof: *Provided,* That for the calendar year 1963, and for each calendar year thereafter, any employer who is subject to this chapter by virtue of the amendment of section 43–301(b)(5)(G) by the Act of March 30, 1962, [Pub. L. 87–424] and who has not been subject to this chapter for a sufficient period to meet this requirement, may qualify for a rate less than the standard rate if his account could have been charged with benefit payments throughout a lesser period but, in no event, less than the twelve consecutive calendar months ending on the computation date (as herein defined) for that calendar year.

(ii) If the amount in the fund as of the computation date is less than 5 per centum of the total pay rolls subject to contributions under this chapter for the twelve-consecutive-month period ending on said computation date, the contribution rate for each employer shall be increased by the percentage differential between said 5 per centum of such total pay rolls and said fund's percentage of such total pay rolls, but in no event shall the contribution rate for any employer be more than 2.7 per centum. Said percentage differential for each employer shall be computed to the next highest one-tenth of 1 per centum.

(iii) If, on December 20 of any calendar year, the amount in the fund becomes less than 2.4 per centum of the total annual pay rolls subject to contribution under this chapter for the twelve-consecutive-month period ending on the preceding June 30, the Board shall make a declaration to that effect. Effective the quarter following such announcement, each employer's rate of contribution shall be the standard rate.

(iv) CONTRIBUTION RATES AFTER TERMINATION OF MILITARY SERVICE.—When the Board finds that the continuity of an employer's employment experience has been interrupted solely by reason of one or more of the owners, officers, managers, partners, or majority stockholders of such employer's employing enterprise having served in the armed forces of the United States of America or any of its allies during a time of war, such employer's employment experience shall be deemed to have been continuous throughout the period that such individual or individuals so served in such armed forces, including the period up to the time it again resumes the status of an employer liable for contributions under this chapter, provided it resumes such status within two years from the date of discharge of such individual or individuals or from the date of the termination of such war, whichever date is the earlier. For the purposes of this paragraph (iv), in determining an employer's contribution rate his average annual pay roll shall be the average of his last three annual pay rolls.

(5) The Board shall for any uncompleted portion of the calendar year beginning with the effective date of this chapter and for each calendar year thereafter classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts. Each employer's contribution rate for each subsequent year or part thereof shall be calculated on the basis of his records filed with the Board and benefit payments disbursed through the applicable computation date. The Board shall compute rates for the second six months of 1963 for all employers first acquiring the necessary twelve months' benefit experience under section 46–303(c)(4)(i) on the computation date June 30, 1963. Such rates shall be based upon such employer's experience in the payment of contributions and benefits charged against his account through June 30, 1963, prior to the crediting of his account with trust fund interest. All employers issued a rate for the second six months of 1963, under this subsection, shall have a computation date of September 30, 1963, for the calendar year 1964.

(6) If, as of the date such classification of employers is made, the Board finds that an employing unit has failed to file any report in connection therewith, or has filed a report which the Board finds incorrect or insufficient, the Board shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to it at the time, and notify the employing unit thereof by registered mail addressed to its last-known address. Unless such employing unit shall file the report or a correct or sufficient report, as the case may be, within fifteen days after the mailing of such notice, the Board shall compute such employing unit's rate of contribution on the basis of such estimates, and the rates so determined shall be subject to increase, but not to reduction, on the basis of subsequently ascertained information.

(7) (a) If 25 per centum or more of the business of any employer is transferred, the transferee shall be determined a successor for the purposes of this section.

(i) If the Board is unable to get information upon which to determine whether or not 25 per centum of the business has been transferred, it may, in its discretion, make such determination based upon the quarterly payrolls of the employers involved for the last complete calendar quarter prior to the transfer and the first complete calendar quarter after such transfer.

(ii) In the event of a transfer of 25 per centum or more of the assets of a covered employer's business by any means whatever, otherwise than in the ordinary course of trade, such transfer shall be

deemed a transfer of business and shall constitute the transferee a successor hereunder, unless the Board, on its own motion or on application of an interested party, finds that all of the following conditions exist:

(1) The transferee has not assumed any of the transferor's obligations;

(2) The transferee has not continued or resumed transferor's goodwill;

(3) The transferee has not continued or resumed the business of the transferor, either in the same establishment or elsewhere; and

(4) The transferee has not employed substantially the same employees as those the transferor had employed in connection with the assets transferred.

(b) The successor, if not already subject to this section, shall become an "employer" subject hereto on the date of such transfer, and shall accordingly become liable for contributions hereunder from and after said date.

(c) The successor shall take over and continue the employer's account, including its reserve and all other aspects of its experience under this section, in proportion to the payroll assignable to the transferred business as determined for the purposes of this section by the Board. However, his successor shall take over only the reserve actually credited to the account of the transferor or for which the transferor has filed a claim with the Board at the date of transfer. The successor shall be secondarily liable for any amounts owed by the employer to the fund at the time of such transfer; but such liability shall be proportioned to the extent of the transfer of business and shall not exceed the value of the assets transferred.

(d) The benefit chargeability of a successor's account under subsection (c), if not accrued before the transfer date, shall begin to accrue on the transfer date in case the transferor's benefit chargeability was then accruing; or shall begin to accrue on the date otherwise applicable to the successor, or on the date otherwise applicable to the transferor, whichever is earlier, in case the transferor's benefit chargeability was not accruing on the transfer date. Similarly, benefits from a successor's account, if not chargeable before the transfer date, shall become chargeable on the transfer date, in case the transferor was then chargeable for benefit payments; or shall become chargeable on the date otherwise applicable to the successor or on the date otherwise applicable to the transferor, whichever is earlier, in case the transferor was chargeable for benefit payments on the transfer date.

(e) The account taken over by the successor employer shall remain chargeable with respect to accrued benefit and related rights based on employment in the transferred business, and all such employment shall be deemed employment performed for such employer.

(f) Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this chapter prior to the date of transfer, his rate of contributions the remainder of the calendar year shall be his rate with respect to the period immediately preceding his date of acquisition. If the successor was not an employer prior to the date of transfer, his rate shall be the rate applicable to the transferor or transferors with respect to the period immediately preceding the date of transfer: *Provided,* That there was only one transferor or there were only transferors with identical rates; if the transferor rates were not identical, the successor's rate shall be the highest rate applicable to any of the transferors with respect to the period immediately preceding the date of transfer. The rate of the transferor, if still subject to the chapter, will not be redetermined and shall remain the rate with respect to the period immediately preceding the date of transfer.

For future years, for the purposes of subsection (c), the Board shall determine the "experience under this section" of the successor employer's account and of the transferring employer's account by allocating to the successor employer's account for each period in question the respective proportions of the transferring employer's payroll, contributions, and the benefit charges which the Board determines to be properly assignable to the business transferred.

(g) Repealed.

(8) Variations from the standard rates of contributions for each calendar year or part thereof shall be determined as of the applicable computation date in accordance with the following requirements:

(i) If as of the computation date the total of all contributions credited to any employer's account, with respect to employment since May 31, 1939, is in excess of the total benefits paid after June 30, 1939, then chargeable or charged to his account, such excess shall be known as the employer's reserve, and his contribution rate for the ensuing calendar year or part thereof shall be—

(A) 2.7 per centum if such reserve is less than 0.8 per centum of his average annual payroll;

(B) 2 per centum if such reserve equals or exceeds 0.8 per centum but is less than 1.3 per centum of his average annual payroll;

(C) 1.5 per centum if such reserve equals or exceeds 1.3 per centum but is less than 1.8 per centum of his average annual payroll;

(D) 1 per centum if such reserve equals or exceeds 1.8 per centum but is less than 2.8 per centum of his average annual payroll;

(E) 0.5 per centum if such reserve equals or exceeds 2.8 per centum but is less than 3.3 per centum of his average annual payroll;

(F) 0.1 per centum if such reserve equals or exceeds 3.3 per centum of his average annual payroll.

(ii) If as of the computation date the total amount of benefits paid and chargeable to an employer's account for the periods after June 30, 1939, is more than the total contributions credited to his account with respect to employment since May 31, 1939, then his contribution rate for the ensuing calendar year or part thereof shall be 2.7 per centum.

(iii) Except as otherwise provided in this section, whenever through inadvertence or mistake erroneous charges or credits are found to have been made to experience-rating accounts, the same shall be readjusted as of the date of discovery and such readjustment shall not affect any computation or rate

assigned prior to the date of discovery but shall be used on the next computation date in calculating future contribution rates.

(iv) Any employer, at any time, may voluntarily pay into the unemployment compensation fund an amount in excess of the contributions required to be paid under the provisions of this chapter, and such amount shall be forthwith credited to his reserve account. His rate of contribution shall be computed, or recomputed, as the case may be, with such amount included in the calculation. To affect such employer's rate of contribution for any year, such amount shall be paid not later than thirty days following the mailing of notice of his rate of contribution for such year, and not later than one hundred and twenty days after the commencement of such year. Such amount, when paid as aforesaid, shall not be refunded or used as a credit in the payment of contributions in whole or in part.

(9) As used in this subsection—

(a) The term "annual pay roll" means the total amount of wages for employment paid by an employer during a twelve-month period ending ninety days prior to the computation date;

(b) The term "average annual pay roll", except for the purposes of paragraph (4) (iv) of this subsection, means the average of the annual pay rolls of any employer for the three consecutive twelve-month periods ending ninety days prior to the computation date: *Provided,* That for an employer whose account could have been charged with benefit payments throughout at least twelve but less than thirty-six consecutive calendar months ending on the computation date, the term "average annual pay roll" means the total amount of wages for employment paid by him during the twelve-month period ending ninety days prior to the computation date;

(c) The term "base period wages" means the wages paid to an individual during his base period for employment;

(d) The term "base period employers" means the employers by whom an individual was paid his base period wages;

(e) The term "most recent employer" means that employer who last employed such individual immediately prior to such individual's filing an initial claim for benefits.

(10) At least one month prior to the final date upon which the first contributions for any calendar year or part thereof become due from any employer at a contribution rate determined under this subsection, the Board shall notify such employer of his rate of contributions and of the benefit charges upon which such rate was based. Such determination shall become conclusive and binding upon the employer unless, within thirty days after the mailing of notice thereof to his last-known address, or in the absence of mailing, within thirty days after the delivery of such notice, the employer files an application for review and a redetermination, setting forth his reasons therefor. Upon receipt of such application, the Board shall voluntarily adjust such matter or shall grant an opportunity for a fair hearing and promptly notify the employer thereof. All such hearings shall be held before a Contribution Rate Review Committee composed of three members who shall be employees of the Board and appointed by the Board. The findings and decision of this Committee shall not be subject to review by the District Auditor. No employer shall have standing, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability of his account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to section 46–311, except on the ground that the services on the basis of which such benefits were found to be chargeable do not constitute services performed in employment for him and only in the event that he was not a party to such determination, redetermination, or decision or to any other proceedings under this chapter in which the character of such services was determined. The employer shall be promptly notified of the Board's denial of his application or of the Board's redetermination, both of which shall become final unless, within thirty days after the mailing of such notice thereof to his last-known address, or in the absence of mailing, within thirty days after the delivery of such notice, a petition for judicial review is filed in the United States District Court for the District of Columbia. In any proceedings under this subsection the findings of the Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such proceedings shall be given precedence over all other civil cases except cases arising under section 46–312 and under section 36–501. An appeal may be taken from the decision of the United States District Court for the District of Columbia to the United States Court of Appeals for the District of Columbia in the same manner as is provided in other civil cases.

(d) The contributions payable pursuant to subsections (b) and (c) of this section shall become due and be paid by each employer to the Board in accordance with such regulations as the Board may prescribe, and shall not be deducted in whole or in part from the wages of individuals in such employer's employ.

(e) From December 31, 1939, to January 1, 1955, wages, for the purpose of this section, shall not include any amount in excess of $3,000 paid by an employer to any person arising out of his or her employment during any calendar year. After December 31, 1954, wages shall not include any amount in excess of $3,000 (or in excess of the limitation on the amount of taxable wages fixed by the Federal Unemployment Tax Act (26 U. S. C. 1600, 1607), whichever is greater) actually paid by an employer to any person during any calendar year. After December 31, 1954, the term "employment" for the purpose of this subsection shall include services constituting employment under any employment security law of another State or of the Federal Government.

(f) In the event the District of Columbia should elect to cover employees under this chapter under the provisions of section 46–301 (b) (8) (i) in lieu of contributions required of employers under this chapter, the District of Columbia shall pay into the fund an amount equivalent to the amount of bene-

fits paid to individuals based on wages paid by the District. If benefits paid an individual are based on wages paid by both the District of Columbia and one or more other employers, the amount payable by the District to the fund shall bear the same ratio to total benefits paid to the individual as the base-period wages paid to the individual by the District of Columbia bears to the total amount of the base-period wages paid to the individual by all of his base-period employers.

The amount of payment required under this section shall be ascertained by the Board quarterly and shall be paid from the general funds of the District at such time and in such manner as the Commissioners of the District of Columbia may prescribe except that to the extent that benefits are paid on wages paid by the District from special administrative funds, the payment by the District into the unemployment fund shall be made from such special funds.

(g) Contributions due under this chapter with respect to wages for insured work shall, for the purpose of this section, be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another State or Federal employment security law if payment into the fund of such contributions is made on such terms as the director finds will be fair and reasonable as to all affected interests. Payments to the fund under this subsection shall be deemed to be contributions for purposes of this section. (Aug. 28, 1935, 49 Stat. 947, ch. 794, § 3; July 2, 1940, 54 Stat. 731, ch. 524, § 1; Nov. 21, 1941, 55 Stat. 781, ch. 500, § 1; Nov. 9, 1942, 56 Stat. 1016, ch. 636; June 4, 1943, 57 Stat. 105, ch. 117; July 11, 1946, 60 Stat. 527, ch. 557; July 26, 1947, 61 Stat. 494, ch. 342, §§ 1, 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 31, 1954, 68 Stat. 989, ch. 1139, § 1; Mar. 30, 1962, 76 Stat. 47, Pub. L. 87–424, §§ 3, 4, 5; Sept. 27, 1962, 76 Stat. 663, Pub. L. 87–705, § 1 (a), (b), (c).)

REFERENCES IN TEXT

The Federal Unemployment Tax Act (26 U.S.C. 1600, 1607), referred to in subsec. (e), is a reference to sections 1600 and 1607 of the Internal Revenue Code, 1939, which were repealed by section 1 of act Aug. 16, 1954, 68A Stat. 915, ch. 736, set out as U.S. Code, title 26 (I.R.C. 1954), § 7851, and are covered by U.S. Code, title 26 (I.R.C. 1954), §§ 3301, 3306, 7701(a)(1). For provision deeming a reference in other laws to a provision of I.R.C. 1939, also as a reference to corresponding provision of I.R.C. 1954, see section 1 of act Aug. 16, 1954, 68A Stat. 916, ch. 736, set out as U.S. Code, title 26 (I.R.C. 1954), § 7852.

AMENDMENTS

1962—Act Mar. 30, 1962, amended subsection (c)(1) and (c)(8)(i) generally, and added subsection (c)(8)(iv). For prior provisions of the amended subsection, see 1961 ed. of the Code.

Section 1(a) of act Sept. 27, 1962, amended subsection (c)(4)(i) by striking out the period at the end thereof, inserting a colon and the proviso clause.

Section 1(b) of the same act amended subsection (c)(5) by adding the last three sentences beginning with the words "The Board shall compute—" and ending with "—for the calendar year 1964".

Section 1(c) of the same act amended subsection (c)(9)(b) by striking out the semicolon at the end thereof, inserting a colon and the proviso clause.

1954—Subsec. (c)(1) amended by act Aug. 31, 1954, to provide for the crediting of interest earned by the fund to the reserve accounts of certain employers.

Subsec. (c)(2) amended by act Aug. 31, 1954, to provide for notification to each claimant's principal base period employer of each payment of benefits to the claimant.

Subsec. (c)(7)(a) amended by act Aug. 31, 1954, to provide for the transfer of experience from one employer to another in case of partial transfer, if only as much as 25% of the business is transferred.

Subsec. (c)(7)(c) amended by act Aug. 31, 1954, to provide that a successor will take over only the reserve actually credited to the account of the transferor, or for which the transferor has filed a claim at the date of transfer.

Subsec. (c)(7)(d) amended to eliminate a comma following the word "date" in the first sentence.

Subsec. (c)(7)(f) amended by act Aug. 31, 1954, respecting provisions concerning the rates applicable to successor employers.

Subsec. (c)(7)(g), relating to special combinations of experience, repealed by act Aug. 31, 1954.

Subsec. (c)(8)(i) amended by act Aug. 31, 1954, to provide the reserve requirements for a reduced rate in each rate step be reduced by one-tenth of 1 percent.

Subsec. (c)(10) amended by act Aug. 31, 1954, which substituted "thirty" for "fifteen" in the second and seventh sentences.

Subsecs. (e)—(g) added by act Aug. 31, 1954.

1947—Subsec. (c)(4)(iv) added by act July 26, 1947.

Subsec. (c)(9)(b) amended by act July 26, 1947.

1946—Subsec. (c)(5) last sentence amended by act July 11, 1946.

Subsec. (c)(7) amended generally by act July 11, 1946.

Subsec. (c)(8) amended by act July 11, 1946, by adding par. iii.

Subsec. (c)(10) amended by act July 11, 1946, which inserted fourth sentence.

1943—Act June 4, 1943 amended section generally.

1942—Subsec. (c) amended by act Nov. 9, 1942, which substituted "1944" for "1943."

1941—Subsec. (c) amended by act Nov. 21, 1941, which substituted "1943" for "1942."

1940—Act July 2, 1940, in paragraph (a)(3) struck out the following words: ", and 1940,"; struck out paragraph (a)(4); in paragraph (b) struck out the letter "(b)" and inserted in lieu thereof the letter "(c)" and added a new paragraph (b); in the original paragraph (b) struck out the words "calendar year 1941" and substituted in lieu thereof "second six months of the calendar year 1942", substituted the word "paid" for the word "payable", and changed the figure "3" to "2.7."

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

EFFECTIVE DATE OF 1962 AMENDMENTS

See note to section 46–301.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act Aug. 31, 1954, effective Jan. 1, 1955, see section 3 of act Aug. 31, 1954, set out as a note under section 46–301.

EFFECTIVE DATE OF 1947 AMENDMENT

Section 3 of act July 26, 1947, provided that:

"The amendments made by this Act [July 26, 1947] shall be effective with respect to employment on or after July 1, 1943. The amount of any contributions or interest thereon paid to the Board by any employer in excess of the amount such employer would have been required to pay if the amendments made by this Act had been in effect on and after July 1, 1943, shall, for the purposes of section 4 (i) of the District of Columbia Unemployment Compensation Act [section 46–304 (i)] be subject to adjustment against subsequent contributions by him. Notwithstanding the period of limitation prescribed in such section 4 (i), the employing unit which paid such excess amount of contributions or interest thereon may make application under such section 4 (i) within one year after the date of the enactment of this Act [July 26, 1947] for an adjustment thereof."

EFFECTIVE DATE OF 1946 AMENDMENT

Act July 11, 1946, made the amendments effective as of 12:01 antemeridian on the first day of the next succeeding calendar quarter following July 11, 1946.

EFFECTIVE DATE OF 1940 AMENDMENT

Amendment of section by act July 2, 1940, effective July 1, 1940, see section 3 of act July 2, 1940, set out as a note under section 46–301.

CROSS REFERENCES

Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq. made applicable to the District of Columbia, see § 36–501.

Power of the Board to recommend change in rate of contributions, see § 46–313 (d).

NOTES TO DECISIONS

Burden of proof

A partnership leasing and operating corporation's plant had burden of proving that timely request was made that District of Columbia Unemployment Compensation Board combine experience of partnership and corporation in determining partnership's unemployment compensation contributions. *Schlosberg* v. *District Unemployment Compensation Bd.* (1948, 167 F. 2d 881, 83 U. S. App. D. C. 220).

Change of ownership

A corporation and partnership leasing and operating corporation's plant were not parties to or subject of "merger, consolidation or other form of reorganization," and change effected was not mere "change in legal identity or form," but was complete change in substantial as well as formal ownership of business, and partnership was not "owned or controlled by substantially same interests as predecessor," and hence experience of corporation and partnership could not be combined in determining partnership's unemployment compensation contributions, notwithstanding that partnership retained corporation's manager and employees. *Schlosberg* v. *District Unemployment Compensation Bd.* (1948, 167 F. 2d 881, 83 U. S. App. D. C. 220).

Under this section requiring employers to pay contributions at different rates based on differences in experience, where admission of partners' wives into partnership caused no change in management or risk, partnership was the same employer after as before admission, and partnership was not required to pay contributions at a new rate. *Cohen* v. *District Unemployment Compensation Bd.* (1948, 167 F. 2d 883, 83 U. S. App. D. C. 220).

Collective bargaining agreements

Controversy regarding employer's failure to secure additional compensation benefits as specified in collective bargaining agreement had to be submitted to arbitration under mandatory provision for arbitration of labor disputes, and trial court should not have undertaken determination of merits prior to arbitration. *C. D. Mayhew, Inc.*, v. *J. L. Pate* (D.C. App. 1964, 202 A. 2d 786).

Construction

This chapter should be interpreted in accordance with its purpose which is to protect employees. *Cohen* v. *District Unemployment Compensation Bd.* (1948, 167 F. 2d 883, 83 U. S. App. D. C. 220).

Determination of rate of compensation

The Unemployment Compensation Board's determination of employers' rate of unemployment compensation contributions for 1945 through 1947 became conclusive and binding on employers fifteen days after issuance of determination in absence of application by employers within such time for review and redetermination of rate by Board. *Spencer* v. *Lampros* (1954, 216 F. 2d 462, 94 U. S. App. D. C. 397).

Dissolution

Dissolution of corporation and acquisition of its business by purchasers of its stock as partners constituted "reorganization effecting a change in legal identity or form" within Unemployment Compensation Act, so as to require partners to request transfer to them of corporation's experience within specified time to be entitled to credit therefor and lower rate of unemployment compensation contributions than for new employers. *Spencer* v. *Lampros* (1954, 216 F. 2d 462, 94 U. S. App. D. C. 397).

Estoppel

Collection by District of Columbia Unemployment Compensation Board of unemployment compensation contributions from partnership leasing and operating corporation's plant at rates paid by corporation did not estop board, after discovering change of ownership, from collecting contributions at proper rate. *Schlosberg* v. *District Unemployment Compensation Bd.* (1948, 167 F. 2d 881, 83 U. S. App. D. C. 220).

Evidence

Witness' oral testimony, that he requested in letter written three years before to District of Columbia Unemployment Compensation Board that experience of corporation and partnership leasing and operating corporation's plant be combined in determining partnership's unemployment compensation contributions, warranted board's finding that timely request was not made. *Schlosberg* v. *District Unemployment Compensation Bd.* (1948, 167 F. 2d 881, 83 U. S. App. D. C. 220).

Nature of contributions

Compulsory unemployment contributions under this chapter are "taxes". *National Rifle Ass'n of America* v. *Young* (1943, 134 F. 2d 524, 77 U. S. App. D. C. 290).

Necessity for request

Subsection (c) (7) of this section enabling two or more employing units to combine their experience, on timely request, after a change in legal identity or form, did not require request by partnership which admitted wives of partnership into the firm without change in management or risk, in order to avoid necessity for paying contributions at different rates based on differences in experience, since there was only one employing unit. *Cohen* v. *District Unemployment Compensation Bd.* (1948, 167 F. 2d 883, 83 U. S. App. D. C. 220).

§ 46–303a. Employer contributions by the District of Columbia.

Appropriations for the District of Columbia shall be available for payment by the District of Columbia of its contributions as an employer, in accordance with the provisions of this chapter. (June 28, 1944, 58 Stat. 530, ch. 300, § 2.)

CODIFICATION

Section comprised the second par. of section 2 of act June 28, 1944, which was the District of Columbia Appropriation Act for 1945, and was not enacted as a part of the District of Columbia Unemployment Compensation Act which is classified to this chapter.

SIMILAR PROVISIONS

1944—July 1, 1943, ch. 184, § 2, 57 Stat. 344.
1943—June 27, 1942, ch. 452, § 2, 56 Stat. 458.
1942—July 1, 1941, ch. 271, § 2, 55 Stat. 538.
1941—June 12, 1940, ch. 333, § 2, 54 Stat. 341.

§ 46–304. Method of paying employer contributions.

(a) The contributions required by section 46–303 shall be paid to and collected by the Board, and shall, immediately upon collection, be deposited in the clearing account of the fund. All moneys so required to be paid to and collected by the Board shall be subject to audit by the District auditor.

(b) Not later than the last day of the following month after the close of each calendar quarter, or at such other time as the Board may by regulations prescribe, every employer shall make a return of, and shall pay the contributions which shall have accrued with respect to, wages paid during such quarter with respect to employment. Wages unpaid solely because of a court order appointing a fiduciary shall be deemed constructively paid when due. Each such return shall be filed with the Board, and shall contain such information and be made in

such manner as the Board may by regulation prescribe. No extension of time for filing the return or for payment of the contributions shall be allowed to any employer, except as herein provided.

(c) (1) If contributions are not paid when due, there shall be added, as part of the contributions, interest at the rate of one-half of 1 per centum per month or fraction thereof from the date the contributions became due until paid: *Provided,* That interest shall not run against a court appointed fiduciary when the contributions are not paid timely because of a court order.

(2) If contributions or wage reports are not filed on or before the fifteenth day of the second month following the close of the calendar quarter for which they are due or contributions are not paid by that time, there shall be added as part of the contributions a penalty of 10 per centum of the contributions but such penalty shall not be less than $5 nor more than $25 and for good cause such penalty may be waived by the Board with the approval of the Commissioners of the District of Columbia.

(d) In the event of the death, dissolution, insolvency, receivership, bankruptcy, composition, or assignment for benefit of creditors of any employer, contributions then or thereafter due from such employer under this section shall have priority over all other claims, except taxes due the United States or the District, and wages (not exceeding $600 with respect to any individual) due for services performed within the three months preceding such event.

(e) If any employer liable to pay the contribution or tax imposed by section 46–303 neglects and refuses to pay the same after demand, the amount (including any interest) shall be a lien upon all of the property and rights to property, whether real or personal belonging to such person. Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Board with the Recorder of Deeds of the District of Columbia. The Board may cause a civil action to be filed in the United States District Court for the District of Columbia to enforce the aforesaid lien by sale of any property or rights to property, whether real or personal, of the delinquent employer affected by said lien. All persons having liens upon or claiming any interest in the property or rights to property sought to be sold, as aforesaid, shall be made parties to the proceedings and brought into court. The court shall proceed to adjudicate all matters involved therein and finally determine the merits of all claims to a lien upon the property and rights to the property in question, and in all cases where a claim or interest of the Board therein is established, may decree a sale of such property and rights of property by the proper officer of the court, and any sale made pursuant to such proceedings shall be made subject to any and all valid liens existing against said property or rights to property, at the date of filing of the notice of lien. Such action shall be heard by the court at the earliest possible date, and shall be entitled to preference on the calendar of the court over all other civil actions except petitions for judicial review of this chapter. In any suit to enforce a lien hereunder the owner of the property or rights of property affected by said lien may be allowed to file with the clerk of the United States District Court for the District of Columbia a written undertaking with two or more sureties to be approved by the court, or with corporate surety approved by the court, to the effect that he and they will pay the judgment that may be recovered and costs which judgment shall be rendered against all the persons so undertaking. Upon the approval of said undertaking the property or rights of property shall be released from such lien. No such undertaking shall be approved by the court until the owner of the property or rights of property in question shall have given at least two days' notice to the Board of his intention to apply to the courts therefor. Each notice shall give the names and residences of the persons intended to be offered as sureties and the time when the motion for such approval will be made, and such sureties shall make oath if required that they are worth over and above all debts and liabilities double the amount of said lien. The Board may appear and object to such approval. When corporate surety is offered and the undertaking bears a certificate of the clerk of the United States District Court for the District of Columbia that said corporation holds authority from the Secretary of the Treasury to do business in the District of Columbia and has a process agent therein, no notice shall be required. Such an undertaking as above mentioned may be offered before any suit is brought in order to discharge the property from such lien, in which case notice shall be given as aforesaid to the Board and the same proceedings shall be had as above directed in relation to the undertaking to be given after the commencement of the suit, except that when the surety is a corporation and the undertaking bears a certificate of the clerk of said United States District Court for the District of Columbia that said corporation holds authority from the Secretary of the Treasury to do business in the District of Columbia, and has a process agent therein, no notice shall be required; and said undertaking shall be to the effect that the owner of said property or rights of property and his said sureties will pay any judgment that may be rendered in any suit that may thereafter be brought for the enforcement of said lien. If such undertaking be approved before any suit is brought, the surety or sureties may be made parties to such suit; if the undertaking be approved after suit is brought, the surety or sureties shall ipso facto become parties to the suit, and in either case the decree of the court shall be against the surety or sureties as well as the owner. Subject to such regulations as the Board may prescribe, the Board shall issue a certificate of release of the lien if the Board finds that the liability for the amount of the contribution or tax imposed, together with all interest in respect thereof, has been satisfied or for any other reason deemed proper by the Board. Such lien shall continue to be valid for a period of ten years from the date of filing of the notice thereof with the Recorder of Deeds of the District of Columbia, unless the same shall have been released of record, as hereinbefore provided. The foregoing remedy of the Board shall be cumulative and no

action taken by the Board shall be or be construed to be an election on the part of the Board to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this chapter.

(f) Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment which is a part of its usual trade, occupation, profession, or business, said employing unit shall report to the Board, in accordance with applicable regulations, the name and address of each and every such contractor or subcontractor so employed. Unless such report is made the employing unit shall for all purposes of the chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged solely in performing such employment. Any employing unit who thus becomes liable for and pays contributions with respect to individuals in the employ of any such contractor or subcontractor, however, may recover same from such contractor or subcontractor.

(g) In payment of any contribution, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(h) COLLECTIONS.—If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by the Board or its designated agent in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection (including collection thereof by distraint), or by civil action in the name of the Board, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review of this chapter. This subsection shall not be construed to mean that the Board shall be required to use only this means of collecting delinquent contributions but it may use any other legal method which it deems advisable.

(i) REFUNDS.—If not later than three years after the date on which any contributions or interest thereon were paid, an employing unit which has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the Board shall determine that such contributions or interest or any portion thereof was erroneously collected, the Board shall allow such employing unit to make an adjustment thereof, without interest, in connection with subsequent contribution payments by it, or if such adjustment cannot be made the Board shall refund said amount, without interest, from the clearing account or benefit account upon checks issued by the Board or its duly authorized agent. For like cause and within the same period, adjustment or refund may be so made on the Board's own initiative. Should benefits have been paid based upon work records filed by the employing unit, claiming an adjustment or refund, such benefit should be disregarded for purposes of figuring such adjustment or refund, and any such benefit payments already having been made at the time of the adjustment or refund, based upon records filed with this Board by such employing unit, shall to that extent be allowed and shall not be deemed to have been paid erroneously. All refunds paid pursuant to this subsection shall be subject to a prior audit by the District auditor.

(j) The Board in its discretion, whenever it may deem it administratively advisable, may charge off of its books any unpaid account due the Board or any credit due an employer who has been out of business for a period of more than three years. Whenever an account is charged off by the Board, there shall be placed in the minutes of the Board a reason for such action.

(k) The Board, or the executive officer provided for under section 46–315 (b), with the consent of the Board, may prescribe the extent, if any, to which any ruling, regulation, or decision relating to this chapter shall be applied without retroactive effect.

(*l*) The Board, with the approval of the corporation counsel and the District auditor, may compromise any civil case arising under this chapter. Whenever a compromise is made by the Board in each such case, there shall be placed in the minutes of the Board the opinion of an attorney of the Board with the reasons therefor, including a statement of (1) the amount of the contributions due, (2) the amount of interest due on such contributions, and (3) the amount actually paid in accordance with the terms of the compromise.

There is hereby established in the Treasury of the United States a special escrow account into which the Board shall deposit all funds received in connection with an offer of compromise. Such funds shall be kept in such escrow account until final action is had upon the offer of compromise and shall not be subject to offset for any indebtedness whatsoever. In the event the compromise is approved, the funds shall be transferred to the District Unemployment Compensation Funds. In the event the compromise is disapproved, the funds shall be immediately returned to the individual who made the offer of compromise. (Aug. 28, 1935, 49 Stat. 948, ch. 794, § 4; July 2, 1940, 54 Stat. 731, ch. 524, § 1; June 4, 1943, 57 Stat. 108, ch. 117; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 10, 1952, 66 Stat. 543, 547, ch. 649, §§ 2(b), 6; Aug. 31, 1954, 68 Stat. 992, ch. 1139, § 1; July 25, 1958, 72 Stat. 417, Pub. L. 85–557, § 1; July 5, 1966, 80 Stat. 265, Pub. L. 89–493, § 14.)

AMENDMENTS

1966—Act July 5, 1966, in second and penultimate sentences of subsec. (e), substituted "Recorder of Deeds of" for "clerk of the United States District Court for".

1958—Subsec. (b) amended by act July 25, 1958, to insert the sentence "Wages unpaid solely because of a court order appointing a fiduciary shall be deemed constructively paid when due."

Subsec. (c) amended by act July 25, 1958, to add the proviso in par. (1) and to substitute "on or before the fifteenth day of the second month following the close of the calendar quarter for which they are due or contributions are not paid by that time" for "when due or contributions are not paid when due" in par. (2).

1954—Subsec. (c) amended by act Aug. 31, 1954, which designated existing provisions as the first par., inserting

"or fraction thereof" and substituting "became" for "become" therein, and added the second par.

Subsec. (d) amended by act Aug. 31, 1954, to include "death."

Subsec. (j) amended by act Aug. 31, 1954, which substituted provisions granting the Board authority to write off uncollectible accounts for "Upon application by an employer, filed pursuant to suitable regulation by the Board, the Board shall determine the extent to which the employer's contributions paid for the first six months of the calendar year 1940 were in excess of his contributions due for said period under Public, Numbered 719, Seventy-sixth Congress, and shall make an adjustment for that amount, without interest, solely in connection with subsequent contributions by him."

Subsec. (*l*) amended by act Aug. 31, 1954, which added provisions relating to the escrow account for use in connection with offers of compromise.

1952—Subsec. (c) amended by act July 10, 1952, § 2(b), to decrease the interest rate from 1 per centum to one-half of 1 per centum per month and to substitute "become" for "became."

Subsec. (h) amended by act July 10, 1952, § 6 to insert "by the Board or its designated agent in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection (including collection thereof by restraint)."

1943—Subsec. (a) amended by act June 4, 1943, which substituted "deposited in the clearing account of the fund" for "paid into the District Unemployment Fund" and added the sentence "All moneys so required to be paid to and collected by the Board shall be subject to audit by the District auditor."

Subsec. (b) amended by act June 4, 1943, which substituted "last day of the following month after the close of each calendar quarter, or at such other time as the Board may by regulations prescribe", and "wages paid during such quarter with respect to employment" for "fifteenth day after the close of each month" and "wages payable with respect to employment by him within such month", deleted "shall be made under oath (except where the amount of the contribution payable is less than $10)" following "Each such return" and inserted "except as herein provided."

Subsec. (c) reenacted by act June 4, 1943.

Subsec. (d) amended by act June 4, 1943, to include receivership and to substitute "$600" and "three months" for "$250" and "six months."

Subsec. (e) added by act June 4, 1943. Former subsec. (e) redesignated (g).

Subsec. (f) added by act June 4, 1943. Former subsec. (f) redesignated (i).

Subsec. (g), formerly (e), so redesignated by act June 4, 1943.

Subsec. (h) added by act June 4, 1943.

Subsec. (i), formerly (f), so redesignated by act June 4, 1943 and amended to substitute "three years" for "one year" and "employing unit" for "employer" wherever appearing, to delete following "erroneously" "Provided, That applications with respect to adjustments or refunds for the years 1936, 1937, 1938, and 1939 may be made within one year from the effective date of this title" and to insert "adjustment or" preceding "refund, based upon records."

Subsecs. (j)—(*l*) added by act June 4, 1943.

1940—Subsec. (b) amended by act July 2, 1940, which substituted:

"Contributions shall become due and be payable at such time and in accordance with such regulations as the Board may prescribe. No extension of the time for filing any return or for the payment of the contributions shall be allowed to any employer. All moneys so required to be paid to and collected by the Board shall be subject to audit by the District Auditor."

for "Not later than the fifteenth day after the close of each month, every employer shall make a return of and shall pay the contributions which shall have accrued with respect to wages payable with respect to employment by him within such month. Each such return shall be made under oath (except where the amount of the contribution payable is less than $10), shall be filed with the Board, and shall contain such information and be made in such manner as the Board may by regulations prescribe. No extension of the time for filing the return or for payment of the contributions shall be allowed to any employer."

Subsec. (f) added by act July 2, 1940.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by act July 25, 1958, effective on the first day of the next succeeding calendar quarter following July 25, 1958, see section 2 of act July 25, 1958, set out as a note under section 46–301.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act Aug. 31, 1954, effective Jan. 1, 1955, see section 3 of act Aug. 31, 1954, set out as a note under section 46–301.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of subsec. (c) of this section by act July 10, 1952, effective July 1, 1952, see section 8 of act July 10, 1952, set out as a note under § 47–1619.

EFFECTIVE DATE OF 1940 AMENDMENT

Amendment of section by act July 2, 1940, effective July 1, 1940, see section 3 of act July 2, 1940, set out as a note under section 46–301.

APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1–504.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorg. Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. The functions of auditing all monies paid to and collected by the District Unemployment Board as provided in subsection (a) of section 46–304, and the function of approving compromises by the District Unemployment Compensation Board of any civil case as provided in subsec. (*l*) were transferred from the Auditor to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19. The function of the Auditor of the District concerning the prior audit of refunds under subsection (i) of section 46–304 were transferred from the Auditor to the Accounting Officer, Finance Office, Department of General Administration by Reorg. Order No. 20 dated Nov. 10, 1952. These orders were issued by the Board of Commissioners pursuant to Reorg. Plan No. 5 of 1952. The orders and plan are set out in the Appendix to title 1, Administration.

CROSS REFERENCE

Refund of taxes generally, see § 47–1016 et seq.

NOTES TO DECISIONS

Limitations

Compulsory unemployment contributions were "taxes" which were expended for a public purpose, that is, the relief of unemployment; and action brought by District Unemployment Compensation Board to recover such contributions was one asserting a public right, and therefore no statute of limitations would run against board in such an action in view of Congress' failure to provide a specific statute of limitations for such an action. *Stonewall Construction Company* v. *McLaughlin et al., etc.* (D. C. Mun. App. 1959, 151 A. 2d 535).

Recovery of contributions

Where Unemployment Compensation Board, after hearing, granted exemption from liability for unemployment contributions, but employer had not changed its position and was not injured by reason of Board's act, the

employer was not entitled to recover contributions previously paid under protest, on grounds of "estoppel" and "res judicata" since the Board could reverse an erroneous ruling retrospectively as well as prospectively. *National Rifle Ass'n of America* v. *Young* (1943, 134 F. 2d 524, 77 U. S. App. D. C. 290).

§ 46–305. Service on nonresident employers.

Any nonresident employer, for whom services constituting employment subject to this chapter are performed, shall be deemed to have appointed the Director of Vehicles and Traffic of the District of Columbia as his true and lawful attorney upon whom may be served all processes in any action or proceedings against such nonresident arising out of, or incident to, this chapter, and said employment shall be a signification that any such process against him served, as herein provided, shall have the same effect and validity as if served on him personally in the District of Columbia. Service of such process shall be made by leaving a copy thereof (with a fee of $2) in the hands of the Director of Vehicles and Traffic of the District of Columbia, or other persons in charge of his office, and such service shall be sufficient service upon such nonresident: *Provided,* That notice of such service and a copy of the process are forthwith sent, by registered mail, by the plaintiff to the defendant and the defendant's return receipt attached to the writ and entered with the initial pleading. The court in which the action is pending may order such extensions as may be necessary to afford the defendant a reasonable opportunity to defend the action, and no judgment by default in any such action shall be granted until at least twenty days shall have elapsed after the notice of such service has been sent to the defendant as hereinabove prescribed. (Aug. 28, 1935, 49 Stat. 949, ch. 794, § 5, formerly § 6; renumbered and amended June 4, 1943, 57 Stat. 111, ch. 117.)

AMENDMENT

1943—Act June 4, 1943, substituted the provisions respecting service on nonresident employers for "There is hereby authorized to be appropriated to the District for each fiscal year, commencing with the fiscal year ending June 30, 1936, such sum as may be necessary to permit the District to pay the contributions required of it under this chapter."

TRANSFER OF FUNCTIONS

The Department of Motor Vehicles headed by a Director to administer through the Office of the Director the nonresident employer process service provisions of this chapter, see Reorg. Ord. No. 54, as amended, set out in the Appendix to title 1, Administration.

§ 46–306. Deposit in unemployment trust fund.

All moneys received in the District unemployment fund from sources other than the unemployment trust fund, except as provided in section 46–304 (i) and section 46–301 (b) (5) (D), shall be immediately paid over to the Secretary of the Treasury to the credit of the unemployment trust fund, to be held in trust for the District upon the terms and conditions provided in section 1104 of title 42, U. S. Code. (Aug. 28, 1935, 49 Stat. 949, ch. 794, § 6, formerly § 7; renumbered and amended June 4, 1943, 57 Stat. 112, ch. 117.)

AMENDMENT

1943—Act June 4, 1943, inserted the exception provision.

§ 46–307. Amount and duration of benefits.

(a) On and after January 1, 1938, benefits shall become payable from the benefit account of the District unemployment fund. All benefits shall be paid through employment offices, in accordance with such regulations as the Board may prescribe.

(b) An individual's "weekly benefit amount" shall be an amount equal to one twenty-third (computed to the next higher multiple of $1) of his total wages for insured work paid during that quarter of his base period in which such total wages were highest, with such other following limitations. If an individual's weekly benefit amount is less than $8, it shall be $8. The Director shall determine annually a maximum weekly benefit amount by computing 50 per centum of the average weekly wage paid to employees in insured work, and shall on or before January 1 of the calendar year in which it shall be effective announce by publication in at least one newspaper of general circulation in the District, the maximum weekly benefit amount so determined. Such computation shall be made by determining total wages reported as paid for insured work by employers in each twelve-month period ending June 30, and dividing said total wages by a figure resulting from fifty-two times the average of mid-month employment reported by employers for the same period. For the period from the effective date of this Act to December 31, 1962, the maximum weekly benefit amount shall be determined and announced by the Director in accordance with the foregoing formula on the basis of wages and employment in the twelve-month period ending June 30, 1961. The maximum weekly benefit amount so determined and announced for a calendar year shall apply only to those claims filed in that year qualifying for maximum payment under the foregoing formula. All claims qualifying for payment at the maximum weekly benefit amount shall be paid at the maximum weekly benefit amount in effect when the benefit year to which the claim relates was first established, notwithstanding a change in said amount for a subsequent calendar year. If the maximum weekly benefit amount is not a multiple of $1, then said maximum weekly benefit amount shall be computed to the next higher multiple of $1.

(c) To qualify for benefits an individual must have (1) been paid wages for employment of not less than $130 in one quarter in his base period, (2) been paid wages for employment of not less than $276 in not less than two quarters in such period, and (3) received during such period wages the total amount of which is equal to at least one and one-half times the amount of his wages for the quarter in such period in which his wages were the highest. Notwithstanding the provisions of clause (3), any otherwise qualified individual, the total amount of whose wages during such period is less than the amount required to have been received during such period under such clause, may qualify for benefits if the differences between the amounts so required to have been received and the total amount of his wages during such period does not exceed $70, but the amount of his weekly benefit, as computed under section 7(b), shall be reduced by $1 if such difference does not exceed $35 or by $2 if such difference

is more than $35. Wages received by an individual in the period intervening between the end of his last base period and the beginning of his last benefit year and paid by employers who were his base period employers in such last base period shall not be available for benefit purposes in a subsequent bene-year unless he has, subsequent to the commencement of such last benefit year, received remuneration for personal services, whether or not such services were performed in employment as defined in this chapter, in an amount equal to at least ten times the weekly benefit amount for which he qualifies in such last benefit year. Benefits payable to an individual with respect to a week shall be reduced, under regulations prescribed by the Board, by any amount received with respect to such week as a retirement pension or annuity under a public or private retirement plan or system provided, or contributed to, by any base period employer. An amount received with respect to a period other than a week shall be prorated by weeks. No reduction shall be made under the preceding two sentences for (A) any retirement pension or annuity received by reason of disability, or (B) any amount received under title II of the Social Security Act.

(d) Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to thirty-four times his weekly benefit amount or 50 percent of the wages for employment paid to such individual by employers during his base period whichever is the lesser. Such total amount of benefits, if not a multiple of $1, shall be computed to the next higher multiple of $1.

(e) Any individual who is unemployed in any week as defined in section 46–301 (e) and who meets the conditions of eligibility for benefits of section 46–309 and is not disqualified under the provisions of section 46–310 shall be paid with respect to such week an amount equal to his weekly benefit amount, less the earnings (if any) payable to him with respect to such week. For the purpose of this subsection, the term "earnings" shall include only that part of the remuneration payable to him for such week which is in excess of 40 per centum of his weekly benefit amount for any week. Such benefits, if not a multiple of $1, shall be computed to the next higher multiple of $1.

(f) DEPENDENT'S ALLOWANCE.—In addition to the benefits payable under the foregoing subsections of this section, each eligible individual who is unemployed in any week shall be paid with respect to such week $1 for each dependent relative, but not more than $3 shall be paid to an individual as dependent's allowance with respect to any one week of unemployment nor shall any weekly benefit which includes a dependent's allowance be paid in the amount of more than the established maximum benefit amount. An individual's number of dependents shall be determined as of the day with respect to which he first files a valid claim for benefits in any benefit year, and shall be fixed for the duration of such benefit year. The dependent's allowance is not to be taken into consideration in calculating the claimant's total amount of benefits in subsection (d) of this section. (Aug. 28, 1935, 49 Stat. 949, ch. 794, § 7, formerly § 8; July 2, 1940, 54 Stat. 732, ch. 524, § 1; June 4, 1943, 57 Stat. 112, ch. 117; Aug. 31, 1954, 68 Stat. 993, ch. 1139, § 1; Mar. 30, 1962, 76 Stat. 48, Pub. L. 87–424, §§ 5, 6, 7.)

AMENDMENTS

1962—Act Mar. 30, 1962, amended subsections (b), (c), and (d) generally, and aslo amended subsection (f) by striking out "$30" and inserting in lieu thereof the words "the established maximum benefit amount".

1954—Subsec. (b) amended by act Aug. 31, 1954, to modify the benefit table.

Subsec. (c) amended by act Aug. 31, 1954, to raise the minimum requirement and the maximum provisions and to require the claimant to have wages in at least two quarters of his base period.

Subsec. (d) amended by act Aug. 31, 1954, to increase an individual's potential benefits in any benefit year.

Subsec. (e) amended by act Aug. 31, 1954, to provide for payment of benefits to eligible persons.

Subsec. (f) amended by act Aug. 31, 1954, to eliminate reference to benefits after termination of military service and to insert provisions concerning dependent's allowances formerly covered by former subsec. (e).

1943—Act June 4, 1943, amended the section generally.

1940—Act July 2, 1940, amended the section generally. As enacted in 1935, the section read:

"(a) Subject to the provisions of subsections (b) and (c) of this section, the Board shall pay, from the District Unemployment Fund, to every eligible individual (1) with respect to each week, commencing with the week beginning January 2, 1938, in which such individual was totally unemployed, a week's benefit, which shall be an amount, computed to the nearest half-dollar, equal to 40 per centum of his weekly wage, plus 10 per centum of such weekly wage if he has a dependent spouse, plus an additional 5 per centum of such weekly wage for each dependent relative: *Provided,* That in no case shall the amount paid to any such individual for any week exceed $15, or 65 per centum of his weekly wage, whichever is the lesser; and (2) with respect to each week commencing with the week beginning January 2, 1938, in which such individual was partially unemployed, an amount which when added to the total amount of remuneration (of any nature whatsoever) payable for services performed by such individual during such week, will total $2 more than the week's benefit to which he would be entitled if totally unemployed during such week.

"(b) With respect to unemployment occurring within any period of fifty-two weeks, benefits shall be payable to every eligible unemployed individual (1) in the ratio of one-third of a week's benefit to each credit week which occurred within the period of one hundred and four weeks ending with the week in which he was last engaged in employment, until a total amount equivalent to sixteen times a week's benefit has been paid to him; and (2) after such total has been paid, in the ratio of one-twentieth of a week's benefit to each credit week which occurred within the period of two hundred and sixty weeks ending with the week in which he was last engaged in employment.

"(c) All payments of benefits under this section shall be charged, in accordance with the applicable ratio, against the earliest credit week or part thereof available for such purpose.

"(d) As used in this section, the term 'credit week' means a week in which the individual concerned performed some employment, against which no benefits have been charged, and with respect to which no benefits were paid to the individual: *Provided,* That any week occurring within the customary school vacation period shall not be counted as a credit week in the case of any individual who attended a school, college, or university in the last preceding school term, and returns to a school, or college, or university at the end of such vacation period."

EFFECTIVE DATE OF 1962 AMENDMENTS

See note to sections 46–301.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act Aug. 31, 1954, effective Jan. 1, 1955, see section 3 of act Aug. 31, 1954, set out as a note under section 46–301.

INTERNAL REFERENCES

"This Act" referred to in subsection (b) is act of Mar. 30, 1962. For effective date of act see note to section 46–301.

Title II of the Social Security Act referred to in subsection (c) is set out in 42 U.S.C. ch. 7.

CROSS REFERENCE

Rules and regulations, see § 46–313.

§ 46–308. Method of paying benefits.

Moneys shall be requisitioned from the Board's account in the unemployment trust fund solely for the payment of benefits and refunds as provided under section 46–304 (i) and section 46–301 (b) (5) (D) in accordance with regulations prescribed by the Board. The Board shall from time to time requisition from the unemployment trust fund such amounts not exceeding the amounts standing to the Board's account therein as it deems necessary for the payment of benefits and refunds for a reasonable future period. Upon receipt of the amount requisitioned, the Board shall deposit it in the benefit account of the District unemployment fund in the Treasury of the United States as a special deposit to be used solely to pay the benefits and refunds provided in this chapter. All payments of benefits shall be made by checks drawn by the Board, or its duly authorized agent, shall be made through the employment offices designated by the Board, and shall be subject to a post, but not a prior, audit by the District auditor. (Aug. 28, 1935, 49 Stat. 950, ch. 794, § 8, formerly § 9; renumbered June 4, 1943, 57 Stat. 114, ch. 117.)

AMENDMENT

Act June 4, 1943, substituted the present provisions for "Each week the Board shall requisition, from the moneys to the credit of the District in the Unemployment Trust Fund, the amount required to pay the benefits accruing with respect to such week. Upon receipt of the amount requisitioned, the Board shall deposit it as part of the District Unemployment Fund in the Treasury of the United States as a special deposit to be used solely to pay the benefits provided in this chapter. All payments of benefits shall be made by checks drawn by the Board, shall be made at the employment offices designated by the Board, and shall be subject to a post, but not a prior, audit by the District auditor."

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorg. Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. The function of post auditing benefit payments made by the District Unemployment Compensation Board was transferred from the Auditor of the District of Columbia to the Internal Audit Officer, Department of General Administration by Reorg. Order No. 19. These orders were issued by the Board of Commissioners pursuant to Reorg. Plan No. 5 of 1952. The orders and plan are set out in the Appendix to title 1, Administration.

§ 46–309. Eligibility for benefits.

An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found by the Board—

(a) that he has made a claim for benefits with respect to such week in accordance with such regulations as the Board may prescribe;

(b) that he has during his base period been paid wages for employment by employers equal to those required by subsection (c) of section 46–307.

(c) that he is physically able to work;

(d) that he is available for work and has registered and inquired for work at the employment office designated by the Board, with such frequency and in such manner as the Board may by regulation prescribe: *Provided,* That failure to comply with this condition may be excused by the Board upon a showing of good cause for such failure; and the Board may by regulation waive or alter the requirements of this subsection as to such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this chapter;

(e) that he has been unemployed for a waiting period of one week. No week shall be counted as a week of unemployment for the purposes of this subsection—

(1) unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

(2) if benefits have been paid with respect thereto; and

(3) unless the individual was eligible for benefits with respect thereto as provided in this section and section 46–310, except for the requirements of this subsection and of subsection (f) of section 46–310;

(f) that he is not a prisoner in a District of Columbia correctional or penal institution who was employed in the free community under authority of the District of Columbia Work Release Act, or that he has not made a claim for benefits with respect to a week during which he was a prisoner in a District of Columbia correctional or penal institution. (Aug. 28, 1935, 49 Stat. 950, ch. 794, § 9, formerly § 10; renumbered and amended July 2, 1940, 54 Stat. 733, ch. 524, § 1; June 4, 1943, 57 Stat. 114, ch. 117; Mar. 30, 1962, 76 Stat. 49, Pub. L. 87–424, § 8; Nov. 10, 1966, 80 Stat. 1520, Pub. L. 89–803, § 11.)

REFERENCES IN TEXT

The District of Columbia Work Release Act, referred to in subd. (f), is classified to § 24–461 et seq.

AMENDMENTS

1966—Section 11 of act Nov. 10, 1966, added subd. (f).

1962—Act Mar. 30, 1962, amended clause (b) by striking all the words after "equal to" and substituting the words "those required by subsection (c) of section 46–307". Prior to amendment clause (b) read as follows: "that he has during his base period been paid wages for employment by employers equal to not less than the amount appearing in column 'C' of the table in section 46–307(b), on the line on which in column 'B' his weekly benefit amount appears."

1943—Subd. (a), formerly (a)(1), so redesignated and amended by act June 4, 1943, which substituted "made a claim for benefits with respect to such week in accordance with such regulations as the Board may prescribe" for "filed a claim for benefits in the form and at the time prescribed, and at the employment office designated, by the Board."

Subd. (b), formerly (a)(2), so redesignated by act June 4, 1943, and amended by substituting "section 7(b)" for "section 8(b)", codified in the text as "section 46–307(b)." Former subd. (b) relating to the furnishing of regulations by the Board to the employer, posting of such regulations by the employer and furnishing a copy of the same to

employee leaving the services of his employer is covered by section 46–311(a).

Subd. (c), formerly (a)(3) so redesignated by act June 4, 1943.

Subd. (d), formerly (a)(4), so redesignated by act June 4, 1943, and amended to add "and the Board may by regulation waive or alter the requirements of this subsection as to such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this chapter."

Subd. (e), formerly (a)(5), so redesignated by act June 4, 1943 and amended to renumber as clauses (1)—(3) former clauses (A)—(C), to delete the two provisos from clause (1) and to substitute "sections 9 and 10 of this Act, except for the requirements of this subsection and of subsection (f) of section 10" for "sections 10 and 11 of the District of Columbia Unemployment Compensation Act, as amended by this title, except for the requirements of this paragraph; and" codified in the text to read "this section and section 46–310, except for the requirements of this subsection and of subsection (f) of section 46–310."

1940—Subd. (a) amended by act July 2, 1940, which substituted "(2) that he has during his base period been paid wages for employment by employers equal to not less than the amount appearing in column 'C' of the table in section 46–307(b), on the line on which in column 'B' his weekly benefit amount appears;"

and "(5) that he has been unemployed for a waiting period of not more than two weeks. No week shall be counted as a week of unemployment for the purposes of this subsection—(A) unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits: *Provided,* That this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment: And provided further, That the week or the two consecutive weeks immediately preceding a benefit year, if part of one uninterrupted period of unemployment which continues into such benefit year, shall be deemed (for the purposes of this subsection only) to be within such benefit year as well as within the preceding benefit year; as well as within the preceding benefit year; (B) if benefits have been paid with respect thereto; and (C) unless the individual was eligible for benefits with respect thereto as provided in 46–309 and 46–310 for the requirements of this paragraph; and" for

"(2) that he has performed employment in at least thirteen weeks within the period of fifty-two weeks ending with the week in which he was last engaged in employment;" and

"(5) that he has been totally unemployed and otherwise eligible for benefits under this chapter for a waiting period of at least three weeks with respect to which he received no benefits, prior to the week for which he claims benefits; and for the purpose of computing such waiting period, two weeks of partial unemployment shall be counted as one week of total unemployment. Such weeks of unemployment need not be consecutive but may be accumulated over the period of fifty-two weeks prior to the week for which he claims benefits; and."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act Nov. 10, 1966, as effective on first day of first month which follows Nov. 10, 1966, by at least 90 days, see § 13 of such act, set out as a note under § 24–461.

EFFECTIVE DATE OF 1962 AMENDMENTS

See note to sections 46–301.

CROSS REFERENCE

Rules and regulations, see § 46–313.

§ 46–310. Disqualification for benefits.

(a) An individual who has left his most recent work voluntarily without good cause, as determined by the Board under regulations prescribed by it, shall not be eligible for benefits with respect to the week in which such leaving occurred and with respect to not less than four nor more than nine consecutive weeks of unemployment which immediately follow such week, as determined by the Board in such case according to the seriousness of the case. In addition such individual's total benefit amount shall be reduced in a sum equal to the number of weeks of disqualification multiplied by the weekly benefit amount.

(b) An individual who has been discharged for misconduct occurring in the course of his most recent work proved to the satisfaction of the Board shall not be eligible for benefits with respect to the week in which such discharge occurred and for not less than four nor more than nine weeks of consecutive unemployment immediately following such week, as determined by the Board in such case according to the seriousness of the misconduct. In addition such individual's total benefit amount shall be reduced in a sum equal to the number of weeks of disqualification multiplied by his weekly benefit amount.

(c) If any individual otherwise eligible for benefits fails, without good cause as determined by the Board under regulations prescribed by it, either to apply for new work found by the Board to be suitable when notified by any employment office or to accept any suitable work when offered to him by any employment office, his union hiring hall, or any employer direct, he shall not be eligible for benefits with respect to the week in which such failure occurred and with respect to not less than four nor more than nine consecutive weeks of unemployment which immediately follow such week, as determined by the Board in such case according to the seriousness of the refusal. In addition such individual's total benefit amount shall be reduced in a sum equal to the number of weeks of disqualification multiplied by the weekly benefit amount. In determining whether or not work is suitable within the meaning of this subsection the Board shall consider (1) the physical fitness and prior training, experience and earnings of the individual, (2) the distance of the place of work from the individual's place of residence, and (3) the risk involved as to health, safety, or morals.

(d)(1) Benefits shall not be denied to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, earnings, hours, or other conditions of the work offered are less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(2) Compensation shall not be denied to any otherwise eligible individual for any week during which he is attending a training or retraining course with the approval of the Board, and such individual shall be deemed to be otherwise eligible for any such week despite the provisions of section 46–309(d) and subsection (c) of this section.

(e) If any individual otherwise eligible for benefits fails, without good cause as determined by the Board under regulations prescribed by it, to attend a training or retraining course when recommended by the manager of the employment office or by the

Board and such course is available at public expense, he shall not be eligible for benefits with respect to any week in which such failure occurred.

(f) An individual shall not be eligible for benefits with respect to any week if it has been found by the Board that such individual is unemployed in such week as a direct results of a labor dispute still in active progress in the establishment where he is or was last employed: *Provided,* That this subsection shall not apply if it is shown to the satisfaction of the Board that—

(1) he is not participating in or directly interested in the labor dispute which caused his unemployment; and

(2) he does not belong to a grade or class of workers of which, immediately before the commencement of the dispute, there were members employed at the premises at which the dispute occurs, any of whom are participating in or directly interested in the dispute: *Provided,* That if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

(g) An individual shall not be eligible for benefits for any week with respect to which he has received or is seeking unemployment compensation under any other unemployment compensation law of another State or of the United States: *Provided,* That if the appropriate agency of such other State or of the United States finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply.

(h) An individual shall not be eligible for benefits for any week within the six weeks prior to the expected date of such individual's childbirth and within the six weeks after the date of such childbirth. In determining the expected date of childbirth the Board in its discretion may rely solely upon a doctor's certificate. (Aug. 28, 1935, 49 Stat. 951, ch. 794, § 10, formerly § 11; renumbered and amended June 4, 1943, 57 Stat. 114, ch. 117; Aug. 31, 1954, 68 Stat. 994, ch. 1139, § 1; Mar. 30, 1962, 76 Stat. 49, Pub. L. 87–424, § 9.)

AMENDMENTS

1962—Act Mar. 30, 1962, amended subsection (d) by changing its designation from "(d)" to "(d)(1)", by changing the designation of clauses "(1)", "(2)", and "(3)" to "(A)", "(B)", and "(C)", and by adding subsection "(2)" thereto; and amended subsection (e) by striking the words "under twenty-one years of age", and the words "courses at a vocational or other school" and substituting, therein, the words "a training or retraining course", and by striking the words "courses are" and substituting, therein, the words "course is".

1954—Subsec. (a) amended by act Aug. 31, 1954, to modify the disqualification for voluntarily leaving the most recent employer without good cause from a disqualification for the week of leaving and the next three weeks to a disqualification for the week of leaving and not less than four nor more than nine additional weeks plus a cancellation of potential benefit rights in a sum equal to the number of weeks of disqualification multiplied by the weekly benefit amount.

Subsec. (b) amended by act Aug. 31, 1954, to modify the disqualification for discharge for misconduct from a disqualification for the week of discharge and not less than one nor more than four additional weeks, to a disqualification for the week of discharge and not less than four nor more than nine additional weeks, plus a cancellation of potential benefit rights in a sum equal to the number of weeks of disqualification multiplied by the weekly benefit amount.

Subsec. (c) amended by act Aug. 31, 1954, to insert "by any employment office, his union hiring hall, or any employer direct", and "earnings" in clause (1), to change the disqualification for refusal of suitable work without good cause from a disqualification for the week in which the refusal occurred and the next three weeks to a disqualification for the week of refusal and not less than four nor more than nine additional weeks plus a cancellation of potential benefits in a sum equal to the number of weeks of disqualification multiplied by the weekly benefit amount.

Subsec. (f) amended by act Aug. 31, 1954, which deleted ", such as a strike, lock-out, or jurisdictional labor dispute" following "direct result of a labor dispute."

Subsec. (h) added by act Aug. 31, 1954.

1943—Subsec. (a) amended by act June 4, 1943, which inserted the words "most recent" and "of consecutive unemployment."

Subsec. (b) amended by act June 4, 1943, which inserted "most recent" and substituted "consecutive weeks of unemployment" and "four" for "weeks" and "six."

Subsec. (c) amended by act June 4, 1943, which inserted "of continuous unemployment" and eliminated prohibition against denial of benefits under specified conditions which is set out as subsec. (d).

Subsec. (d), formerly the third sentence of subsec. (c), so redesignated by act June 4, 1943 and amended to insert "earnings" in clause (2). Former subsec. (d) relating to ineligibility for benefits for failure to attend vocational or other school is covered by subsec. (e).

Subsec. (e), formerly (d), so redesignated by act June 4, 1943.

Subsecs. (f), (g) added by act June 4, 1943.

EFFECTIVE DATE OF 1962 AMENDMENTS

See note to section 46–301.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act Aug. 31, 1954, effective Jan. 1, 1955, see section 3 of act Aug. 31, 1954, set out as a note under section 46–301.

CROSS REFERENCE

Rules and regulations, see § 46–313.

NOTES TO DECISIONS

Voluntary unemployment

Where Unemployment Compensation Board found that employee had voluntarily quit job without good cause and thereafter had reasonably and actively looked for work Board was entitled to impose a penalty of four weeks' benefits and thereafter restore eligibility for compensation. *AEM, Inc., etc.* v. *I. H. Ecke, deceased and Dist. Unemployment Comp. Board* (1959, 271 F. 2d 506, 106 U.S. App. D.C. 240).

In proceeding on appeal from award of Unemployment Compensation Board of benefits to claimant who had voluntarily quit employment without good cause, there was substantial evidence to support Board's finding that claimant after quitting had reasonably and actively sought work and as of a specified date had become eligible for unemployment benefits. *Id.*

§ 46–311. Determination of claims.

(a) Claims for benefits shall be made in accordance with such regulations as the Board may prescribe. Each employer shall post and maintain in places readily accessible to individuals in his service printed statements concerning such regulations or such other matters as the Board may by regulations prescribe. Each employer shall supply such individuals with copies of such printed statements or materials relating to claims for benefits as the Board may by regulation prescribe. Such

printed statements or materials shall be supplied by the Board to each employer without cost to him.

(b) Promptly after an individual has filed a claim for benefits, an agent of the Board designated by it for such purpose shall make an initial determination with respect thereto which shall include a determination with respect to whether or not such benefit may be payable, and if payable, the week with respect to which payments will commence, the maximum duration thereof, and the weekly benefit amount, except that in any case in which the payment or denial of benefits will be determined by the provisions of section 46–310 (e), the agent shall promptly transmit such claim to an appeal tribunal which shall make a decision thereon after such investigation as it deems necessary, and after affording the parties opportunity for fair hearing in accordance with subsection (e) of this section, and the claimant and interested parties shall be given notice thereof and permitted to appeal therefrom to the Board and the courts as is provided in this chapter for notice of, and appeals from, decisions of appeal tribunals. An initial determination may, for good cause, be reconsidered. The claimant and other parties to the proceedings shall be promptly notified of the initial determination or any amended determination and the reasons therefor. Benefits shall be denied or, if the claimant is otherwise eligible, paid promptly in accordance with such initial determination except as hereinafter otherwise provided. The claimant or any party to the determination may file an appeal from such initial determination or from a reconsideration of such determination within ten days after notification thereof, or after the date such notification was mailed to his last known address. If upon such initial determination benefits are allowed but the record of the case indicates that a disqualification has been alleged or may exist, benefits shall not be paid prior to the expiration of the period for appeal as hereinafter provided. If an appeal is duly filed with respect to a matter other than the weekly benefit amount or maximum duration of benefits payable, benefits with respect to the period prior to the final decision of the Board shall be paid only after such decision: *Provided,* That if an appeal tribunal affirms an initial determination allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken. If, subsequent to such initial determination, benefits with respect to any week for which a claim has been filed are denied for reasons other than matters included in the initial determination, the claimant shall be promptly notified of the denial and the reasons therefor, and may appeal therefrom in accordance with the procedure herein described for appeals from initial determinations.

(c) To hear and decide appealed claims, the Board shall appoint one or more appeal tribunals to hold hearings in accordance with regulations prescribed by the Board at which all parties shall be given opportunity to present evidence and to be heard. In the conduct of such hearings, the parties shall not be bound by common law or statutory rules of evidence or other technical rules of procedure, but the appeal tribunal shall use due diligence to ascertain the true facts of the case.

(d) Each appeal tribunal shall consist of either an examiner regularly employed by the Board on a salaried basis or a body composed of an examiner who shall act as chairman, and, without regard to the civil-service laws otherwise applicable, of one representative of employees and one representative of employers, each designated by the Board. No representative shall be regularly employed by the Board, nor shall any person acting in any case on behalf of the Board have any interest, direct or indirect, in the case. In no case shall the hearings proceed unless the examiner designated as a member of an appeal tribunal is present; and if either or both of such representatives fail to appear for any such hearings or are disqualified from participating in any such hearings, the examiner shall proceed to hear the case: *Provided,* That the Board may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. Each such representative shall be paid for each day on which he actively engaged or was present and prepared to engage in the conduct of any such hearings, such sums, not in excess of $10, as the Board shall by regulation prescribe.

(e) An appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall, unless such appeal is withdrawn, affirm or modify the finding of facts and the initial determination. The parties shall be duly notified of the decision of such appeal tribunal, together with the reasons therefor. The Board, under regulations prescribed by it, may permit further appeal by any party or may, upon its own motion, affirm, reverse, or modify the decision of the appeal tribunal or may set it aside and order a rehearing or the taking of additional evidence before the same or a different appeal tribunal. Unless a petition for such appeal is filed within ten days after the date of notification or mailing of the decision of an appeal tribunal, or within such ten-day period the Board has taken action on its own motion in accordance with the provisions of this subsection, the decision of the appeal tribunal shall constitute the decision of the Board and shall be effective as such. Any decision of an appeal tribunal which is not so modified or so appealed within such ten-day period is final for all purposes, except as provided in section 46–312 (a), and is not subject to review by the District auditor. All decisions rendered by the Board affirming, reversing, or modifying any decision of an appeal tribunal shall become effective immediately, unless the Board shall otherwise order, and are not subject to review by the District auditor.

(f) A full and complete record shall be kept of all proceedings in connection with an appealed claim. All testimony at every hearing on any such claim shall be taken down by a stenographer, but shall not be transcribed except upon order of the Board or in the event of an appeal pursuant to section 46–312 (a). Upon any such appeal, a copy of all the testimony and of the findings of fact upon which the Board's decision was based shall be filed with the court, and the facts so found shall, if supported by evidence, be binding on the court.

(g) Witnesses subpenaed pursuant to this section shall be allowed fees at a rate fixed by the Board. Such fees shall be deemed part of the expense of administering this chapter. (Aug. 28, 1935, 49 Stat. 951, ch. 794, § 11, formerly § 12; renumbered and amended June 4, 1943, 57 Stat. 116, ch. 117.)

AMENDMENTS

1943—Subsec. (a) added by act June 4, 1943. Former subsec. (a) relating to filing of claims for benefits, determination of entitlement to claim by agent of Board, notice of and appeal to Board from determination and prohibition against payment of benefits pending final decision of Board is incorporated in subsec. (b).

Subsec. (b) added by act June 4, 1943. The subsection incorporates the provisions of former subsec. (a) relating to filing of claims for benefits, determination of entitlement to claim by agent of Board, notice of and appeal to Board from determination and prohibition against payment of benefits pending final decision of Board. Former subsec. (b) relating to appointment of examiner or appeal tribunal to hold hearings not bound by rules of evidence or technical rules of procedure is incorporated in subsec. (c).

Subsec. (c) added by act June 4, 1943. The subsection incorporates the provisions of former subsec. (b) relating to appointment of examiner or appeal tribunal to hold hearings not bound by rules of evidence or technical rules of procedure. Former subsec. (c) relating to finding of facts and decision of examiner or appeal tribunal, the effective date of such decision, Board review and effective date of Board's decisions is incorporated in subsec. (e).

Subsec. (d) amended by act June 4, 1943, which substituted the present provisions for "Each appeal tribunal shall consist of an examiner regularly employed by the Board on a salary basis and a representative of employees and a representative of employers designated by the Board. No such representative shall be regularly employed by the Board or have any financial interest, direct or indirect, in the case. In no case shall the hearings proceed unless the examiner designated as a member of the appeal tribunal is present; and, if either or both of such representatives fail to appear for any such hearing, the examiner shall proceed to hear the case. Each such representative shall be paid such sum, not in excess of $10, as the Board shall by regulations prescribe, for each day on which he actively engaged, or was present and prepared to engage, in the conduct of any such hearings."

Subsec. (e) added by act June 4, 1943. The section incorporates the provisions of former subsec. (c) relating to review and determination by the Board and effective date of Board's decision. Former subsec. (e) relating to power to administer oaths, take depositions, certify to official acts and issue subpoenas is covered by section 46–313(g).

Subsec. (f) amended by act June 4, 1943, which substituted "an appealed claim" for "a disputed claim" and "section 12" for "section 13", codified in the text as "section 46–312."

Subsec. (g), formerly (i), so redesignated and amended by act June 4, 1943, to delete "and all other expenses of proceedings involving disputed claims" following "such fees."

Subsec. (h), which provided immunity from self-incrimination for attendance as a witness and production of records, was deleted by act June 4, 1943 and is covered by section 46–313(i).

Subsec. (i) redesignated (g) and amended by act June 4, 1943 to delete "and all other expenses of proceedings involving disputed claims" following "Such fees."

§ 46–312. Court review.

(a) Within thirty days after the decision of the Board has become final, any party to the proceeding may appeal from the decision to the United States District Court for the District of Columbia. Upon the filing of any such appeal notice thereof shall be served upon the Board by the appellant and upon any other party to the proceedings. Such appeal shall be heard by the court at the earliest possible date and shall be given precedence over all other civil cases. It shall not be necessary on any such appeal to enter exceptions to the rulings of the Board and no bond shall be required for entering such appeal. In no event shall any appeal act as a supersedeas. In any appeal under this section the findings of the Board, or of the examiner or appeal tribunal, as the case may be, as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law: *Provided,* That no appeal shall be permitted under this section by any party who has not first exhausted his administrative remedies as provided by this chapter.

(b) An appeal may be taken from a decision of such court to the United States Court of Appeals for the District of Columbia. (Aug. 28, 1935, 49 Stat. 953, ch. 794, § 12, formerly § 13; renumbered and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 4, 1943, 57 Stat. 118, ch. 117; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENTS

1943—Subsec. (a) amended by act June 4, 1943, which substituted "any party to the proceeding may appeal from the decision to the District Court of the United States for the District of Columbia" for "either party may appeal to the Supreme Court of the District of Columbia from such decision", conforming to change of name effected by act June 25, 1936, and inserted "and upon any other party to the proceeding" and provisions for conclusiveness of findings and exhaustion of administrative remedies as prerequisite to an appeal.

Subsec. (b) amended by act June 4, 1943, which changed "District" to "District of Columbia."

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

NOTES TO DECISIONS

Admissions by motion

In action to recover unemployment contributions paid under protest, where complaint alleged that Unemployment Compensation Board after hearing granted exemption, such legal conclusion was not admitted by the Board's motion to dismiss the complaint. *National Rifle Ass'n of America* v. *Young* (1943, 134 F. 2d 524, 77 U. S. App. D. C. 290).

Voluntary unemployment

Where Unemployment Compensation Board found that employee had voluntarily quit job without good cause and thereafter had reasonably and actively looked for work Board was entitled to impose a penalty of four weeks' benefits and thereafter restore eligibility for compensation. *AEM, Inc., etc.* v. *I. H. Ecke, deceased, and Dist. Unemployment Comp. Board* (1959, 271 F. 2d 506, 106 U.S. App. D.C. 240).

In proceeding on appeal from award of Unemployment Compensation Board of benefits to claimant who had voluntarily quit employment without good cause, there was substantial evidence to support Board's finding that claimant after quitting had reasonably and actively sought work and as of a specified date had become eligible for unemployment benefits. *Id.*

§ 46–313. Administration.

(a) The Board is hereby authorized and directed to administer the provisions of this chapter. Sub-

ject to the Civil Service Act the Board is further authorized to employ such officers, examiners, accountants, attorneys, experts, agents, and other persons, and to make such expenditures as may be necessary to administer this chapter, and to authorize any such person to do any act or acts which could lawfully be done by the Board. The Civil Service Commission is hereby authorized and directed to confer a competitive classified civil-service status upon those employees performing services for the Board on July 1, 1940: *Provided,* (1) That such employees are certified by the Board as having rendered satisfactory service for not less than six months; (2) that they qualify in such appropriate noncompetitive examination as may be prescribed by the Civil Service Commission; however, all employees certified by the Board in accordance with condition (1) hereof shall automatically be eligible to take such noncompetitive examination; (3) that they are citizens of the United States; and (4) that they are not disqualified by any provision of section 3 of Civil Service Rule V. The Board may, in its discretion, require bond from any of its employees engaged in carrying out the provisions of this chapter.

(b) The Board is further authorized to make and enforce all reasonable regulations which may be necessary to carry out the provisions of this chapter. Such regulations shall become effective five days after they have been published in a newspaper of general circulation in the District.

(c) The Board shall each year, not later than May 1, submit to Congress a report covering the administration and operation of this chapter during the preceding calendar year, and containing such recommendations as the Board wishes to make.

(d) The Board shall, whenever it believes that a change in the contribution or benefit rates is necessary to protect the solvency of the fund, at once recommend such change to Congress if in session.

(e) FEDERAL-STATE COOPERATION.—In the administration of this chapter the Board shall cooperate to the fullest extent consistent with the provisions of this chapter, with the Social Security Board, created by the Act of Congress, entitled "The Social Security Act, as amended", and is authorized and directed to take such action, through the adoption of appropriate rules, regulations, administrative methods, and standards, as may be necessary to secure to the District and its citizens all advantages available under the provisions of such Act, under the provisions of sections 1602 and 1603 of the Federal Unemployment Tax Act, and under the provisions of the Act of Congress entitled "An Act to provide for the establishment of a national employment system and for cooperation with States in the promotion of such system, and for other purposes", approved June 6, 1933, as amended. The Board shall comply with the regulations of the Social Security Board relating to the receipt or expenditure by the States of moneys granted under any of such Acts and shall make such reports, in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports.

The Board may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment-insurance law.

(f) DISCLOSURE OF INFORMATION.—Except as hereinafter otherwise provided, information obtained from any employing unit or individual pursuant to the administration of this chapter and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner, whether by subpena or otherwise, revealing the individual's or employing unit's identity. Any claimant (or his legal representative) shall be supplied with information from the records of the division, to the extent necessary for the proper presentation of his claim in any proceeding under this chapter with respect thereto. Subject to such restrictions as the Board may by regulation prescribe, such information may be made available to any agency of this or any other State, or any Federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or the Department of Public Welfare of the government of the District of Columbia, or the United States Accounting Office or the Bureau of Internal Revenue of the United States Department of the Treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon request therefor the Board shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any State agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter. The Board may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this chapter, and may in connection with such request transmit any such report or return to the Comptroller of the Currency of the United States as provided in section 1606 (c) of the Federal Internal Revenue Code.

(g) In the discharge of the duties imposed by this chapter, any member of the Board and any duly authorized representative thereof shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpenas to compel attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

(h) In the case of contumacy by, or refusal to obey a subpena issued to, any person, the Board may invoke the aid of the United States District Court for the District of Columbia in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Board or officer designated by the Board,

there to produce records, if so ordered, or to give testimony touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpena of the Board, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(i) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Board or in obedience to the subpena of the Board or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Board, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. (Aug. 28, 1935, 49 Stat. 953, ch. 794, § 13, formerly § 14; renumbered and amended July 2, 1940, 54 Stat. 733, ch. 524, title I, § 1; June 4, 1943, 57 Stat. 118, ch. 117; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 31, 1954, 68 Stat. 995, ch. 1139, § 1; Aug. 30, 1964, 78 Stat. 696, Pub. L. 88–514, § 1.)

REFERENCES IN TEXT

The Civil Service Act (Jan. 16, 1883, 22 Stat. 403, ch. 27, as amended), referred to in this section, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by title 5, U.S.C. §§ 1101–1103, 1105, 1301–1303, 1307, 1308, 2102, 2951, 3302–3306, 3318, 3319, 3321, 3361, 7152, 7153, 7321, 7322, 7352; title 18, U.S.C. § 1917. For effect on references, in other laws (such as in this section), to laws replaced by provisions in title 5, U.S.C., see § 7(b) of such act Sept. 6, 1966, Pub. L. 89–554, set out in codification note under § 1–251.

The Social Security Act and "such Act", referring to the Social Security Act, referred to in subsec. (e), is classified to 42 U.S.C. ch. 7.

Sections 1602 and 1603 of the Federal Unemployment Tax Act, referred to in subsec. (e), and section 1606(c) of the Federal Internal Revenue Code, referred to in subsec. (g), are references to sections 1602, 1603 and 1606(c) of the Internal Revenue Code, 1939, were repealed by section 1 of act Aug. 16, 1954, 68A Stat. 915, ch. 736, set out as 26 U.S.C. § 7851 (I.R.C. 1954), and are covered by 26 U.S.C. §§ 3303, 3304, 3305(c) (I.R.C. 1954). For provision deeming a reference in other laws to a provision of I.R.C. 1939, also as a reference to corresponding provision of I.R.C. 1954, see section 1 of act Aug 16, 1954, 68A. Stat. 916, ch. 736, set out as 26 U.S.C. § 7852 (I.R.C. 1954).

Act for establishment of national employment system and for cooperation with States in promotion of such system, approved June 6, 1933, as amended, referred to in subsec. (e), is classified to 29 U.S.C. ch. 4B.

Such Acts, referred to in subsec. (e), refer to the Social Security Act, the Federal Unemployment Tax Act and act June 6, 1933, as amended.

CIVIL SERVICE RULES

Section 3 of Civil Service Rule V referred to in subsection (a) is as follows:

"3. Disqualifications.—The Commission may, in its discretion, refuse to examine an applicant for appointment or reinstatement or to certify an eligible for any of the following reasons: (a) Dismissal from the service for delinquency, inefficiency, or misconduct; (b) physical or mental unfitness for the position for which he applies: *Provided,* That the Commission may, in its discretion, exempt from the physical requirements established for any position a disabled honorably discharged soldier, sailor, or marine upon a certificate of the United States Veterans' Administration attesting that he has completed an appropriate and sufficient rehabilitatory course of training for the duties of the class of positions in which employment is sought; *And provided further,* That the Commission, may in its discretion, waive the physical requirements in the case of a disabled veteran not so trained to permit his examination; (c) criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct; (d) intentionally making a false statement as to any material fact, or practicing any deception or fraud in securing examination, registration, certification, or appointment; (e) refusal to furnish testimony as required by rule XIV; and (f) the habitual use of intoxicating beverages to excess.

"Any of the reasons stated in the foregoing clauses (b) to (f), inclusive, shall also be good cause for removal from the service."

AMENDMENTS

1964—Section 1 of act Aug. 30, 1964, amended the third sentence of subsection (f) by inserting after "public employment offices", the following ", or the Department of Public Welfare of the government of the District of Columbia, or the United States Accounting Office".

1954—Subsec. (c) amended by act Aug. 31, 1954, which substituted "May 1" for "March 1."

1943—Subsec. (a) amended by act June 4, 1943, which substituted "on July 1, 1940" for "upon the effective date of this title" and deleted "Provided" preceding "however."

Subsec. (b) amended by act June 4, 1943, which substituted "prescribe" for "make and enforce."

Subsec. (c) amended by act June 4, 1943, which substituted "March 1" for "February 1."

Subsec. (d) reenacted by act June 4, 1943.

Subsec. (e) amended by Act June 4, 1943, which substituted the present provisions for "The Board is hereby authorized and directed, in the administration of this chapter, to cooperate to the fullest practicable extent with the Social Security Board created by the Social Security Act; to make such reports in such form and containing such information as the Social Security Board may from time to time require, and to comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and to comply with the regulations prescribed by the Social Security Board governing the expenditure of such sums as may be allotted and paid to the District under section 501—503 of title 42, U.S. Code, for the purpose of assisting in administering this chapter."

Subsecs. (f)—(i) added by act June 4, 1943.

1940—Subsec. (a) amended by act July 2, 1940, which substituted the present provision for:

"The Board is hereby authorized and directed to administer the provisions of this chapter. The Board is further authorized to employ such officers, examiners, accountants, attorneys, experts, agents, and other persons, and to make such expenditures, as may be necessary to administer this chapter, and to authorize any such person to do any act or acts which could lawfully be done by the Board. The Board may, in its discretion, require bond from any of its employees engaged in carrying out the provisions of this chapter."

CHANGE OF NAME

The official title of the Bureau of Internal Revenue was changed to the Internal Revenue Service by Treas. Dept. Order 150–29, eff. July 9, 1953.

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act Aug. 31, 1954, effective Jan. 1, 1955, see section 3 of act Aug. 31, 1954, set out as a note under section 46–301.

EFFECTIVE DATE OF 1940 AMENDMENT

Amendment of section by act July 2, 1940, effective July 1, 1940, see section 3 of act July 2, 1940, set out as a note under section 46–301.

TRANSFER OF FUNCTIONS

The functions of the Social Security Board in the Federal Security Agency, together with the functions of its Chairman, were transferred to the Federal Security Administrator to be performed by him or under his direction and control by such officers and employees of the Federal Security Agency as he should designate and the Social Security Board was abolished by section 4 of 1946, Reorg. Plan No. 2, transmitted May 16, 1946 and made effective July 16, 1946, 11 F. R. 7873, 60 Stat. 1095, by act Dec. 20, 1945, 59 Stat. 613, ch. 582, § 1.

The Federal Security Agency was established, the Federal Security Administrator was designated as the head of the Agency, the Social Security Board and its functions were consolidated with other agencies and their functions under the Federal Security Agency to be administered as a part of such Agency under the direction and supervision of the Administrator, and the Chairman of the Social Security Board was required to perform such administrative duties as the Administrator should direct by section 201, 202 of 1939 Reorg. Plan No. I, transmitted Apr. 25, 1939, and made effective July 1, 1939, 4 F. R. 2727, 53 Stat. 1423, by act June 7, 1939, 53 Stat. 813, ch. 193.

CROSS REFERENCES

Regulations for payment of benefit, see § 46–307.

Rules and regulations for reporting for work, see § 46–309.

Rules and regulations generally, see § 1–226.

Rules and regulations to determine refusal to accept work, see § 46–310.

Rules and regulations to determine voluntary leaving of work without good cause, see § 46–310.

NOTES TO DECISIONS

Confidential information

Evidence relating to the practices and methods of the D. C. Unemployment Compensation Board is excludible as the statute specifically prohibits the disclosure of information given it by employers, including the identity of the employer and it would be against the public interest to permit obtaining by indirection what is directly prohibited by statute. *Orndorff* v. *Cohen* (D. C. Mun. App. 1949, 62 A. 2d 794).

Limitations

Compulsory unemployment contributions were "taxes" which were expended for a public purpose, that is, the relief of unemployment; and action brought by District Unemployment Compensation Board to recover such contributions was one asserting a public right, and therefore no statute of limitations would run against board in such an action in view of Congress' failure to provide a specific statute of limitations for such an action. *Stonewall Construction Company* v. *McLaughlin et al., etc.* (D. C. Mun. App. 1959, 151 A. 2d 535).

§ 46–314. Method of paying administrative expenses.

All moneys received by the Board from the United States under sections 501–503 of title 42, U. S. Code or from other sources for administering this chapter shall, immediately upon such receipt, be deposited in the Treasury of the United States as a special deposit to be used solely to pay such administrative expenses (including expenditures for rent, for suitable office space in the District of Columbia, and for lawbooks, books of reference, and periodicals), traveling expenses when authorized by the Board, premiums on the bonds of its employees, and allowances to investigators for furnishing privately owned motor vehicles in the performance of official duties at rates not to exceed $40 per month. All such payments of expenses shall be made by checks drawn by the Board and shall be subject to audit by the Commissioners of the District of Columbia in the same manner as are payments of other expenses of the District. Notwithstanding the provisions of this section and the provisions of sections 46–302 and 46–308, the Board is authorized to requisition and receive from its account in the Unemployment Trust Fund in the Treasury of the United States of America, in the manner permitted by Federal law, such moneys standing to the District's credit in such fund, as are permitted by Federal law to be used for expenses incurred by the Board for the administration of this chapter and to expend such moneys for such purposes. Moneys so received shall, immediately upon such receipt, be deposited in the Treasury of the United States in the same special account as are all other moneys received for the administration of this chapter. All moneys received by the Board pursuant to section 502 of title 2, U. S. Code shall be expended solely for the purposes and in the amounts found necessary by the Department of Labor for the proper and efficient administration of this chapter. In lieu of incorporation in this chapter of the provision described in section 503(a)(9) of title 42, U. S. Code, the Board shall include in its annual report to Congress, provided in section 46–313 (c), a report of any moneys received after July 1, 1941, from the Department of Labor under sections 501–503 of title 42, U. S. Code, and any unencumbered balances in the unemployment compensation administration fund as of that date, which the Department of Labor finds have, because of any action or contingency, been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Department of Labor for the proper administration of this chapter. (Aug. 28, 1935, 49 Stat. 954, ch. 794, § 14, formerly § 15; renumbered and amended July 1, 1941, 55 Stat. 540, ch. 272, § 1; June 4, 1943, 57 Stat. 120, ch. 117; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F. R. 7873, 60 Stat. 1095; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F. R. 5225, 63 Stat. 1065; Aug. 31, 1954, 68 Stat. 995, ch. 1139, § 1.)

AMENDMENTS

1954—Act Aug. 31, 1954, provided for the payment of premiums on employees bonds, increased the allowance for the use of privately owned motor vehicles from $24 to $40 per month, authorized the Board to requisition and expend for administration of this chapter moneys in its account in the Unemployment Trust Fund, provided for deposits in the special account, and changed "field men" to "investigators", "District auditor" to "Commissioners of the District of Columbia" and "Social Security Board" to "Department of Labor", wherever appearing, to conform to such change effected under 1949 Reorg. Plan No. 2.

1943—Act June 4, 1943, authorized the use of moneys to pay for rent, suitable office space, lawbooks, books of reference, periodicals, traveling expenses, and motor vehicle allowances to field men, and added to the paragraph the provisions relating to use of moneys for purposes and in the amounts found necessary for proper and efficient administration of the chapter and requiring reports to Congress, formerly designated as the second paragraph, substituting "section 13(c) of this Act" for "section 14(c) of this Act", codified in the text as "section 46–313(c)."

1941—Act July 1, 1941, added a second paragraph providing for use of moneys for purposes and in the amounts found necessary for proper and efficient administration of the chapter and requiring reports to Congress.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act Aug. 31, 1954, effective Jan. 1, 1955, see section 3 of act Aug. 31, 1954, set out as a note under section 46–301.

EFFECTIVE DATE OF 1941 AMENDMENT

Section 2 of act July 1, 1941 [amending this section], provided that: "This Act shall take effect as of 12:01 o'clock antemeridian July 1, 1941".

TRANSFER OF FUNCTIONS

The functions of the Social Security Board in the Federal Security Agency were transferred to the Federal Security Administrator to be performed by him or under his direction and control by such officers and employees of the Federal Security Agency as he should designate and the Social Security Board was abolished by 1946 Reorg. Plan No. 2, transmitted May 16, 1946, and made effective July 16, 1946, by act Dec. 20, 1945, 59 Stat. 613, ch. 582.

The Federal Security Agency was established, the Federal Security Administrator was designated as the head of the Agency, and the Social Security Board and its functions were consolidated with other agencies and their functions under the Federal Security Agency to be administered as a part of such Agency under the direction and supervision of the Administrator, by section 201, 202 of 1939 Reorg. Plan No. I, transmitted Apr. 25, 1939, and made effective July 1, 1939, 4 F.R. 2727, 53 Stat. 1423, by act June 7, 1939, 53 Stat. 813, ch. 193, § 1.

§ 46–315. District Unemployment Compensation Board.

(a) There is hereby established the District Unemployment Compensation Board, to be composed of the Commissioners of the District as members ex officio, and one representative of employees and one representative of employers to be appointed by the Commissioners. Each such representative shall be a resident of the District and shall hold office for a term of three years from the date of his appointment; except that any representative appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. The president of the Board of Commissioners of the District shall be chairman of the Board.

(b) The Board shall administer this chapter through an executive officer to be appointed and employed by the Board, subject to section 46–313 (a). Such executive officer shall act as secretary of the Board and is hereby authorized to act in the name of the Board in all matters specifically delegated to him by the Board.

(c) The Commissioners of the District shall serve on the Board without additional compensation, but the representatives of employees and employers, respectively, shall be paid $25 for each day of active service. For the purposes of this subsection, a part of a day shall be construed as an entire day.

(d) The Board, as herein established, shall be and constitute a body corporate with an official seal which shall be judicially noticed, and shall be capable of suing and being sued as such. (Aug. 28, 1935, 49 Stat. 954, ch. 794, § 15, formerly § 16; renumbered and amended June 4, 1943, 57 Stat. 121, ch. 117; Aug. 31, 1954, 68 Stat. 996, ch. 1139, § 1.)

AMENDMENTS

1954—Subsec. (c) amended by act Aug. 31, 1954, which increased the amount paid employer and employee Board members from $10 to $25 and added the provision construing a part of a day as an entire day.

1943—Subsec. (a) amended by act June 4, 1943, to eliminate subd. (1) designation of the exception clause and subd. (2) reading "the term of office of the first representative of employees shall be two years" and to substitute the president of the Board of Commissioners for the chairman of the Commissioners as the chairman of the Board.

Subsec. (b) amended by act June 4, 1943, to insert "subject to section 46–313(a)".

Subsec. (c) reenacted by act June 4, 1943.

Subsec. (d) added by act June 4, 1943.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act Aug. 31, 1954, effective Jan. 1, 1955, see section 3 of act Aug. 31, 1954, set out as a note under section 46–301.

TRANSFER OF FUNCTIONS

Reorg. Order No. 37 of the Board of Commissioners dated June 16, 1953, established the District Unemployment Compensation Board under the direction and control of the Board of Commissioners. The previously existing District Unemployment Compensation Board was abolished and all of its functions and positions including the duties, powers and authorities of all officers and employees were transferred to the new Board, and all positions, personnel, property, records and unexpended balances relating to the functions and positions transferred were also transferred to the new Board. This order was issued pursuant to Reorg. Plan No. 5 of 1952. The order and plan are set out in the Appendix to title 1, Administration.

§ 46–316. Reciprocal arrangements.

(a) The Board is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other States or of the Federal Government, or both, whereby—

(1) services performed by an individual for a single employing unit for which services are customarily performed by such individual in more than one State shall be deemed to be services performed entirely within any one of the States (i) in which any part of such individual's service is performed or (ii) in which such individual has his residence or (iii) in which the employing unit maintains a place of business, provided there is in effect, as to such services, an election, approved by the agency charged with the administration of such State's unemployment-compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such State;

(2) potential rights to benefits accumulated under the unemployment-compensation laws of one or more States or under one or more such laws of the Federal Government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Board finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;

(3) wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment-compensation law of another State or of the Federal Government, shall be deemed to be wages for employment for the purpose of determining his rights to benefits under this chapter, and wages for employment, on the basis of which an individual may become en-

titled to benefits under this chapter shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another State or of the Federal Government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid under this chapter upon the basis of such wages or services, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for employment, as the Board finds will be fair and reasonable as to all affected interests; and

(4) contributions due under this chapter with respect to wages for employment shall for the purposes of section 46–304 be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another State or Federal unemployment-compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions and the actual earnings thereon as the Board finds will be fair and reasonable as to all affected interests.

(b) Reimbursements paid from the fund pursuant to paragraph 3 of subsection (a) of this section shall be deemed to be benefits for the purpose of sections 46–306 to 46–308. The Board is authorized to make to other State or Federal agencies and to receive from such other State or Federal agencies reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subsection (a) of this section.

(c) The administration of this chapter and of other State and Federal unemployment-compensation and public-employment-service laws will be promoted by cooperation between the District and such other States and the appropriate Federal agencies in exchanging services and making available facilities and information. The Board is therefore authorized to make such investigations, secure and transmit such information, make available such services and facilities, and exercise such of the other powers provided herein with respect to the administration of this chapter as it deems necessary or appropriate to facilitate the administration of any such unemployment-compensation or public-employment-service law, and in like manner to accept and utilize information, services, and facilities made available to the District by the agency charged with the administration of any such other unemployment-compensation or public-employment-service law.

(d) To the extent permissible under the laws and Constitution of the United States, the Board is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment-compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under the employment-security law of the District or under a similar law of such government. (Aug. 28, 1935, 49 Stat. 954, ch. 794, § 16, formerly § 17; renumbered and amended June 4, 1943, 57 Stat. 121, ch. 117.)

AMENDMENTS

1943—Act June 4, 1943, substituted the present provisions for "The Board is hereby authorized, upon such terms as in its judgment will not result in any loss to the District Unemployment Fund, to enter into agreements with the proper authorities under State unemployment-compensation laws whereby there shall be effected with respect to individuals who have removed from employment in the District to employment in the State covered by the agreement, or who have removed from employment in such State to employment in the District, an exchange of the rights acquired by such individuals with respect to unemployment benefits in the place of their former employment. The terms of all such agreements entered into by the Board shall be published at least once in a newspaper of general circulation in the District."

§ 46–317. Records and reports.

(a) Every employing unit, whether or not liable to pay contributions under section 46–303, shall keep such true and accurate work records with respect to all individuals employed by it as the Board may prescribe. Such records shall be open to inspection by the Board and shall be subject to being copied by the Board or their authorized representative at any reasonable time and as often as may be necessary.

(b) The Board may require from any employing unit any sworn or unsworn reports in connection with its business, covering employment, employees, wages, earnings, unemployment and related matters, as the Board deems necessary to the effective administration of this chapter. Except as hereinbefore provided in section 46–313 (f), information thus obtained may not be divulged. Any person who violates any provision of this section or section 46–313 (f) shall be fined not less than $20 nor more than $200 or imprisoned not longer than ninety days, or both. (Aug. 28, 1935, 49 Stat. 955, ch. 794, § 17, formerly § 18; renumbered and amended June 4, 1943, 57 Stat. 122, ch. 117.)

AMENDMENTS

1943—Subsec. (a) amended by act June 4, 1943, which substituted the present provisions for "Every employer shall keep true and accurate employment records of all individuals employed by him in employment, including the hours of employment and the wages payable therefor. Such records shall be open to inspection by the Board every day except Saturdays, Sundays, and legal holidays, between the hours of 9 o'clock ante meridian and 4 o'clock post meridian."

Subsec. (b) amended by act June 4, 1943, which substituted the present provisions for "The Board may require from any such employer such reports in connection with his business, covering employment, employees, wages, hours, unemployment, and related matters, as the Board deems necessary to the effective administration of this chapter. Information thus obtained shall not be published or be open to the public in any manner which will reveal the employer's identity; and any person who violates any provision of this section shall be fined not less than $20 nor more than $200 or imprisoned not longer than ninety days, or both."

Subsec. (c) which provided that "Upon request therefor, the Board shall furnish to any agency of the United States or of the District charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and a statement of such recipient's rights to further benefits under this chapter." was deleted by act June 4, 1943.

§ 46–318. Protection of rights and benefits.

(a) No agreement by any individual to waive any of his rights under this chapter or to pay any part

of the contribution payable by his employer with respect to his or any other individual's employment, shall be valid; nor shall any employer make, require, or permit any deduction from the wages payable to his employees for the purpose of paying any part of the contributions required of the employer under this chapter, or require or attempt to induce any individual to waive any right he may acquire under this chapter. Any employer who violates any provision of this subsection shall, for each such offense, be fined not less than $100 nor more than $1,000 or be imprisoned not more than six months, or both.

(b) No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be valid or enforceable; and the right to any such benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and the benefits received by any individual so long as they are not mingled with other funds of the recipient shall be exempt from any remedy whatsoever for the collection of all debts except debts accrued for necessaries furnished to such individual, his spouse, or his dependents during the time when such individual was unemployed.

(c) No individual seeking to establish a claim for benefits shall be charged any fee whatsoever by the Board or its representatives, or by the court or any officer thereof. Any individual claiming benefits in any proceeding before the Board or its representative or the court may be represented by counsel or other duly authorized agent; but no such counsel or agent shall either charge or receive for such services more than an amount approved by the Board. Any person who violates any provision of this subsection shall, for each such offense, be fined not more than $500 or imprisoned not more than one year, or both. (Aug. 28, 1935, 49 Stat. 955, ch. 794, § 18, formerly § 19; renumbered and amended June 4, 1943, 57 Stat. 123, ch. 117.)

AMENDMENTS

1943—Subsec. (b) amended by act June 4, 1943, which inserted "pledge, or encumbrance", substituted "attachment, or" for "attachment, and" and "and the benefits received by any individual so long as they are not mingled with other funds of the recipient shall be exempt from any remedy whatsoever for the collection of all debts except debts accrued for necessaries furnished to such individual, his spouse, or his dependents during the time when such individual was unemployed" for "and the benefits received by any individual shall be exempt from the payment of all debts except debts accrued for necessaries furnished to such individual or his spouse at a time when such individual was unemployed" and deleted the last sentence reading "Exemptions provided for in this subsection may not be waived".

Subsec. (c) amended by act June 4, 1943, which substituted "or its representatives, or by the court or any officer thereof. Any individual claiming benefits in any proceeding before the Board or its representative or the court may be represented by counsel or other duly authorized agent; but no such counsel or agent shall either charge or receive for such services more than an amount approved by the Board" for; "and no person who represents any such individual in any proceeding shall charge or receive for his services a sum in excess of 10 per centum of the aggregate amount of benefits received by such individual pursuant to the decision in such proceedings."

NOTES TO DECISIONS

Attachment

Court properly refused to aggregate unemployment compensation benefits of husband with wife's wages in determining wife's exemption from attachment, in absence of showing that benefits were mingled with wages or that debt was for necessaries furnished during unemployment. *Washington Telephone Federal Credit Union* v. *Breeden* (D.C. Mun. App. 1959, 151 A. 2d 774).

§ 46–319. Penalties.

(a) Whoever makes a false statement or representation knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment provided for in this chapter or under an employment security law of any other State, of the Federal Government, or a foreign government for himself or any other individual, shall, for each such offense, be fined not more than $100 or imprisoned not more than sixty days, or both.

(b) Any employing unit, and any officer or agent of any employing unit or any other person, who furnishes a false record or makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact to avoid the payment of any or all of the contributions required of such employing unit under this chapter, or to prevent or reduce the payment of benefits to any individual entitled thereto, or who fails or refuses to pay the contributions or other payment or to furnish any reports required of him under this chapter, shall for each such offense be fined not more than $1,000 or imprisoned not more than six months, or both. For purposes of this subsection an officer of a corporation charged with any duty required by this chapter shall be personally liable to prosecution under this section.

(c) Any person who shall willfully violate any provision of this chapter or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not more than $200 or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of his fraud, has received any sum as benefits under this chapter to which he is not entitled shall, in the discretion of the Board, be liable to repay such sum to the Board, to be deposited in the fund; be liable to have such sum deducted from any future benefits payable to him under this chapter; or may have such sum waived in the discretion of the Board. If any person, other than by reason of his fraud, is paid any sum as benefits under this chapter, to which he was not entitled, he shall not be liable to repay such sum, but in the discretion of the Board be liable to have such sum deducted from any future benefits payable to him with respect to the benefit year current at the time of such receipt: *Provided, however,* That no such recoupment from future benefits shall be had if such sum is received by such person without fault on his part and such recoupment would defeat the purpose of this chapter or would be against equity and good conscience; or in the discretion of the Board such recoupment has been waived. In any case in which, under this subsection, a claimant is liable to repay to the Board any sum, such sum may be collected without interest, by civil ac-

tion in the name of the Board. The disbursing officer and certifying officer of the Board shall not be held liable for any amounts certified or paid by them, in good faith, prior to the effective date of this chapter, or subsequent thereto, to any person where the refund, recoupment, adjustment, or recovery of such amount is waived under this subsection or where such refund, recoupment, adjustment, or recovery under this subsection is not completed prior to the death of the person against whom such refund, recoupment, adjustment, or recovery has been authorized.

(e) Any person who the Board finds has made a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact to obtain or increase any benefit under this chapter may be disqualified for benefits for all or part of the remainder of such benefit year and for a period of not more than one year commencing with the end of such benefit year. Such disqualification shall not affect benefits otherwise properly paid after the date of such fraud and prior to the date of the ruling of disqualification.

All findings under this subsection shall be made by a claims deputy of the Board and such findings shall be subject to review in the same manner as all other disqualifications made by a claim deputy of the Board. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 19, formerly § 20; renumbered and amended June 4, 1943, 57 Stat. 123, ch. 117; Aug. 31, 1954, 68 Stat. 996, ch. 1139, § 1; July 25, 1958, 72 Stat. 417, Pub. L. 85–557, § 1.)

AMENDMENTS

1958—Subsec. (e) amended by act July 25, 1958, which substituted the present provisions for:

"Any person who the Board finds has made a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to obtain or increase any benefit or any other payment under this chapter may be required by the Board to repay to it for the fund a sum equal to the amount of all benefits received by him for weeks subsequent to the date of the offense and falling within the benefit year current at the time of the offense. Such claimant may also be disqualified for benefits for all or part of the remainder of such benefit year and for a period of not more than one year commencing with the end of such benefit year and thereafter while any sum payable to the Board for the fund under this subsection is still due and unpaid, unless the Board in its discretion shall decide, after the disqualification imposed has been served, to allow the claimant to file a claim for benefits and recoup from such benefits the amount still payable to the Board.

"All findings under this subsection shall be made by an appeals tribunal of the Board which shall afford the claimant a reasonable opportunity for a fair hearing in accordance with the provisions of section 46–311 and such findings shall be subject to review in the same manner as all other disqualifications decided by an appeals tribunal of the Board."

1954—Subsec. (a) amended by act of Aug. 31, 1954, which inserted "or under an employment security law of any other State of the Federal government, or a foreign government."

Subsec. (e) added by act Aug. 31, 1954.

1943—Subsec. (a) amended by act June 4, 1943, which inserted "or knowingly fails to disclose a material fact", substituted "any benefit or other payment" for "any payment" and eliminated provision for minimum fine of $20.

Subsec. (b) amended by act June 4, 1943, which substituted the present provisions for "Any employer, and any officer or agent of an employer, who furnishes a false record or makes a false statement or representation, knowing it to be false, to avoid the payment of any or all of the contributions required of such employer under this chapter, or to prevent or reduce the payment of benefits to any individual entitled thereto, and any employer who willfully refuses to pay the contributions or to furnish any report required of him under this chapter, shall for each such offense, be fined not less than $100 nor more than $1,000 or imprisoned not more than six months, or both.

Subsecs. (c), (d) added by act June 4, 1943.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by act July 25, 1958, effective on the first day of the next succeeding calendar quarter following July 25, 1958, see section 2 of act July 25, 1958, set out as a note under section 46–301.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act Aug. 31, 1954, effective Jan. 1, 1955, see section 3 of act Aug. 31, 1954, set out as a note under section 46–301.

§ 46–320. Disposition of fines.

The amount of all fines collected pursuant to the provisions of this chapter shall be turned over to the Board and by it paid into the District unemployment fund. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 20, formerly § 21; renumbered June 4, 1943, 57 Stat. 124, ch. 117.)

§ 46–321. Representation in court.

(a) On the request of the Board the United States attorney for the District of Columbia shall represent the Board in any action in court arising under this chapter, or in connection with the administration and enforcement of its provisions, or the rules and regulations authorized thereunder, including actions for the collection of contributions due hereunder; but in any civil action the Board may be represented by its own counsel.

(b) Violations of any provision of this chapter shall be prosecuted by the United States attorney for the District of Columbia. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 21, formerly § 22; renumbered and amended June 4, 1943, 57 Stat. 124, ch. 117.)

AMENDMENT

1943—Act June 4, 1943, inserted "or the rules and regulations authorized thereunder" in subsec (a) and substituted "United States attorney for the District of Columbia" for United States district attorney for the District" in subsecs. (a) and (b).

§ 46–322. All audits by District Auditor.

All audits herein prescribed shall be made by the District auditor in the same manner as are all other audits of the District. (Aug. 28, 1935, ch. 794, § 22, as added June 4, 1943, 57 Stat. 125, ch. 117.)

CODIFICATION

Right to amend or repeal provisions, formerly constituting this section, are set out as section 46–323.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated August 28, 1952, and effective September 2, 1952.

The functions prescribed by sections 46–304 (a), 46–304 (*l*), and 46–308 were transferred from the District Auditor to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19 dated November 10, 1952. The functions of the Auditor prescribed by section 46–304 (i) was transferred to the Accounting Office, Finance Office, Department of General

Administration by Reorganization Order No. 20 dated November 10, 1952. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the appendix to Title 1.

§ 46–323. Right to amend or repeal reserved.

All rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of Congress to amend or repeal this chapter at any time. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 23; June 4, 1943, 57 Stat. 125, ch. 117.)

CODIFICATION

Provisions relating to separability of provisions, formerly constituting section 46–322, are set out as section 46–324.

AMENDMENT

1943—Act June 4, 1943, substituted "All rights" for "All the rights."

§ 46–324. Separability of provisions.

If any provisions of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby. (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 24; June 4, 1943, 57 Stat. 125, ch. 117.)

CODIFICATION

Short title provision, formerly constituting this section, is set out as section 46–325.

AMENDMENT

1943—Act June 4, 1943, substituted "or circumstances" for "and circumstances" following "other persons."

§ 46–325. Short title.

This chapter may be cited as the "District of Columbia Unemployment Compensation Act." (Aug. 28, 1935, 49 Stat. 956, ch. 794, § 26, formerly § 25; June 4, 1943, 57 Stat. 125, ch. 117.)

§ 46–326. Commissioners of the District of Columbia.

(a) Wherever this chapter prescribes the performance of a duty by any official or agency of the District of Columbia, such duty shall be performed by the Commissioners of the District of Columbia or such officer, employee, or agency as the Commissioners may delegate to perform the duty for them.

(b) Where any provision of this chapter, or any amendment made by this chapter, refers to an office or agency abolished by or under the authority of Reorganization Plan Numbered 5 of 1952, such reference shall be deemed to be to the office, agency, or officer exercising the functions of the office or agency so abolished. (Aug. 28, 1935, ch. 794, § 27, as added Aug. 31, 1954, 68 Stat. 996, ch. 1139, § 1.)

REFERENCES IN TEXT

Reorganization Plan Number 5 of 1952, referred to in the text, is set out in the Appendix to title 1, Administration.

EFFECTIVE DATE

Section effective Jan. 1, 1955, see section 3 of act Aug. 31, 1954, set out as a note under section 46–301.

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Sec.

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47–111. Repealed.

47–112. Disbursing officer—Appointment—Bond—Duties.

47–112a. Examination of vouchers and disbursement thereon—Accountability.

47–112b. Exceptions to liability for overpayments on Government bills of lading or transportation requests.

47–113. Repealed.

47–113a. Appointment of deputy disbursing officer and assistant disbursing officers—Compensation.

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47–113b. Authority and duties of deputy disbursing officer and assistant disbursing officers.

47–113c. Penalties for official misconduct of disbursing officers—Bond.

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47–119. Notification to disbursing officer of objections to allowance of disbursements.

47–120. Auditor—Duties.

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47–121. Auditor—Countersigning checks.

47–122. Chief clerk to act in event of absence or disability of auditor.

47–123. Auditor to audit all accounts.

47–124. Amount of disbursing officers' outstanding checks to be deposited in Treasury.

47–125. Disbursing officer's checks—Payment to holders of outstanding checks.

47–126. Fees collected to be paid into Treasury of the United States.

47–126a. Fees and fines.

47–127 to 47–130. Omitted.

47–130a. Revenues credited to District of Columbia general fund.

47–131. Repealed.

47–132. Money received from sale of animals and materials to be paid into Treasury.

47–133. Appropriations for playground employees to be paid from District revenues.

47–134. Repealed.

47–135. Investment of District of Columbia's funds in United States Government securities—Deposit of interest to credit of appropriate fund—Sale and exchange of such securities.

47–136. Maintenance and repairs of vehicles—Working fund.

47–137. Working fund for printing, duplicating, and photographing.

47–138. Restoration of lapsed appropriations.

47–139. "Capital Outlay" appropriations available without regard to fiscal year project limitations.

47–140. Trust funds held by District of Columbia—Lack of communication by owners of fund—Notice to owners that claims will be barred.

47–141. Publication of notice relating to unclaimed funds—Form and contents of notice—Deposit of unclaimed funds in the Treasury of the United States.

47–142. Small sums—Exemptions from notice requirements.

47–143. Deductions of expenses upon refunds to depositors—Deposit of deductions in the Treasury of the United States.

47–144. "Commissioners" defined.

§ 47–101. Fiscal year for District of Columbia—Commencement.

The fiscal year of the District of Columbia shall commence on the first day of July in each and every year until otherwise provided by law. (Leg. Assem., Aug. 22, 1871, ch. 65.)

NOTES TO DECISIONS

Effective date of exemption from taxation

Where private act declared that property of club was exempt from taxation but was silent as to liabilty for

taxes accrued prior to its approval by the President on July 2, 1956, property of the club was exempt from taxation for the fiscal year 1957 which commenced on Sunday, July 1, 1956, where the Commissioners were empowered to approve the list of exemptions on or before July 1, which being a Sunday, the Commissioners could have acted to recognize exemption from taxation throughout the entire day of the appeal by the President. *District of Columbia* v. *General Federation of Women's Clubs* (1957, 249 F. 2d 503, 101 U.S. App. D.C. 411).

Personal property tax on bankrupt

Personalty of a bankrupt, in the hands of trustee in bankruptcy on July 1, 1954, was subject to district's personal property tax for the fiscal year commencing on that date, notwithstanding the fact that such date of assessment was subsequent to the date of bankrupt's adjudication in bankruptcy, and that the trustee did not conduct any business. *Brown, Trustee in Bankruptcy, etc.,* v. *Collector of Taxes for the District of Columbia* (1957, 247 F. 2d 786, 101 U. S. App. D. C. 200).

§ 47–102. Indebtedness not to be increased—Penalty.

There shall be no increase of the amount of the total indebtedness of the District of Columbia existing on June 11, 1878; and any officer or person who shall knowingly increase, or aid or abet in increasing, such total indebtedness, shall be deemed guilty of a high misdemeanor, and, on conviction thereof, shall be punished by imprisonment not exceeding ten years, and by fine not exceeding ten thousand dollars. (June 11, 1878, 20 Stat. 108, ch. 180, § 13.)

§ 47–103. Officers to give security.

All officers appointed by the President for the District, who, by virtue of the provisions of any law of Congress, are required to give security for moneys that may be intrusted to them for disbursement, shall give such security at such time and in such manner as the Secretary of the Treasury may prescribe. (R. S., D. C., § 87.)

CROSS REFERENCES

Bonds—Assessor, see § 47–602.
Auditor, see § 47–120.
Collector of Taxes, see § 47–302.
Disbursing officer, see § 47–112.

§ 47–104. Diversion of funds prohibited—Penalty.

It shall not be lawful for the District authorities, or any person charged with the disbursements of money in the District, to divert from its legitimate object any money levied or collected as taxes from the people of the District. Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor in office, and be dismissed therefrom. (R. S., D. C., §§ 116, 118.)

§ 47–105. "Antideficiency Act" applicable to the District of Columbia.

The provisions of section 665 of title 31, U. S. Code, known as the "Antideficiency Act," are hereby extended and made applicable in all respects to appropriations made for and expenditures of and to all of the officers and employees of the government of the District of Columbia. (June 26, 1912, 37 Stat. 184, ch. 182, § 9.)

§ 47–106. Apportionment of appropriations for contingent and miscellaneous expenses.

The Commissioners of the District of Columbia shall, on or before the beginning of each fiscal year, so apportion appropriations made for contingent and miscellaneous expenses under the Metropolitan police, fire department, electrical department, and other offices or departments of the government of the District of Columbia as to prevent deficiencies in said appropriations. (July 1, 1902, 32 Stat. 561, ch. 1351.)

ELECTRICAL DEPARTMENT

Reorganization Order No. 55, June 30, 1953, set out in the Appendix to Title 1, Administration, established a Department of Licenses and Inspections and transferred to such department all functions of the Electrical Inspection Section in the former Department of Inspections.

§ 47–107. Appropriations for contingent expenses—Accounting.

All expenditures from appropriations made for contingent expenses of the District of Columbia shall be accounted for in the General Accounting Office as other expenditures for the District, and a detailed statement of such expenditures shall be reported to Congress in accordance with section 104 of title 5, U. S. Code. (Feb. 25, 1885, 23 Stat. 319, ch. 145; July 18, 1888, 25 Stat. 314, ch. 676; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

AMENDMENT

1888—Act July 18, 1888, repealed provisions which read: "That thereafter all appropriations made for contingent expenses of the District of Columbia shall be expended under the direction and in the sole discretion of the Commissioners."

TRANSFER OF FUNCTIONS

"General Accounting Office" was substituted for "Treasury Department" in view of act June 10, 1921, which transferred the functions of the Treasury Department with respect to accounting for expenditures to the General Accounting Office. See 31 U.S.C. § 44.

NOTES TO DECISIONS

Powers of Comptroller General

No greater powers were given to the Comptroller General than had been enjoyed by his predecessors. *Mare* v. *Alexander* (D. C. Mass. 1925, 2 F. 2d 895, affirmed 5 F. 2d 964).

Shipping Board Emergency Fleet Corporation

The Shipping Board Emergency Fleet Corporation organized as a private corporation under District of Columbia laws, is an entity distinct from the United States and its financial transactions are within the control of its own officers, and mandamus to subject a claim against it to the audit of the Comptroller General must therefore be refused. *United States ex rel. Skinner and Eddy Corp.* v. *McCarl* (1927, 48 S. Ct. 12, 275 U. S. 1, 72 L. Ed. 131).

§ 47–108. Permanent appropriations repealed.

(a) Effective July 1, 1935, such portion of any Acts as provide appropriations from the appropriation accounts appearing on the books of the Government and listed in subsection (b) of this section are hereby repealed, and any balances remaining in, or but for this provision would accrue to, such accounts shall be covered into the Treasury of the United States to the credit of the District of Columbia. Any claims accruing on or after July 1, 1935, which but for this section properly would have been charged to these appropriation accounts shall, upon proper audit, be certified to Congress for appropriation, which is hereby authorized.

(b) (1) Militia fund from fines, District of Columbia (DCs592).

(2) Industrial Home School fund, District of Columbia (DCs463).

(3) Sanitary fund, District of Columbia (DCt619).

(4) New site and buildings, Industrial Home School, District of Columbia (DCs460).

(5) Payment to tenants excess rentals recovered by Rent Commission, District of Columbia (DCs087).

(6) Escheated estates relief fund, District of Columbia (DCs612).

(7) Redemption of tax-lien certificates, District of Columbia (DCt618).

(8) Washington special tax fund, District of Columbia (DCt623).

(9) Redemption of assessment certificates, District of Columbia (DCt617). (June 26, 1934, 48 Stat. 1230, ch. 756, § 13.)

§ 47–109. Permanent appropriations abolished.

(a) On and after July 1, 1935, appropriations for the District of Columbia appearing on the books of the Government and listed in subsection (b) of this section are abolished as such, and so much of the several Acts as provide for such appropriations is amended so as to authorize in lieu thereof annual definite appropriations, estimates for which shall be incorporated in the estimates of annual appropriations for the District of Columbia.

(b) (1) Refunding water rents, and so forth, District of Columbia (DCx602).

(2) Refunding taxes, District of Columbia (DCx601).

(3) Extension, and so forth, of streets and avenues, District of Columbia (fiscal year) (DC–114).

(4) Policemen and Firemen's Relief Fund, District of Columbia (DCt614). (June 26, 1934, 48 Stat. 1230, ch. 756, § 14.)

§ 47–110. Permanent appropriations continued.

(a) The funds appearing on the books of the Government and listed in subsections (b) and (c) of this section shall be classified on the books of the Treasury as trust funds. All moneys accruing to these funds are hereby appropriated, and shall be disbursed in compliance with the terms of the trust. Hereafter moneys received by the Government as trustee analogous to the funds named in subsections (b) and (c) of this section, not otherwise herein provided for, except moneys received by the Comptroller of the Currency or the Federal Deposit Insurance Corporation, shall likewise be deposited into the Treasury as trust funds with appropriate title, and all amounts credited to such trust-fund accounts are hereby appropriated and shall be disbursed in compliance with the terms of the trust: *Provided,* That, effective July 1, 1935, expenditures from the trust fund "Soldiers' Home, Permanent Fund" (8t184) shall be made only in pursuance of appropriations annually made by Congress, and such appropriations are hereby authorized: *Provided further,* That personal funds of deceased inmates, Naval Home, now deposited with the pay officer of the Naval Home, shall be deposited in the Treasury to the credit of the trust fund account "Personal Funds of Deceased Inmates, Naval Home" (7t989): *Provided further,* That on June 30 of each year there shall be transferred to the trust fund receipt account directed to be established in section 725p of title 31, U. S. Code, such portion of the balances in any trust-fund account hereinbefore or hereafter listed or established, except the balances in the accounts listed in subsection (c) of this section, which have been in any such fund for more than one year and represent moneys belonging to individuals whose whereabouts are unknown, and subsequent claims therefor shall be disbursed from the trust fund receipt account "Unclaimed Moneys of Individuals Whose Whereabouts are Unknown," directed to be established in section 725p of title 31, U. S. Code.

* * * * *

(54) Unclaimed condemnation awards, Rock Creek and Potomac Parkway Commission, District of Columbia (DCt620).

(55) Miscellaneous trust-fund deposits, District of Columbia (DCt613).

(56) Surplus fund, District of Columbia (DCt621).

(57) Relief and rehabilitation, District of Columbia Workmen's Compensation Act (DCt604).

(58) Inmates' fund, workhouse and reformatory, District of Columbia (DCt605).

* * * * *

(79) Matured obligations of the District of Columbia (2t070).

* * * * *

(c) * * *

* * * * *

(3) Teachers' Retirement Fund Deductions, District of Columbia (DCt624).

(4) Teachers' Retirement Fund, Government Reserves, District of Columbia (DC627).

* * * * *

(June 26, 1934, 48 Stat. 1233, ch. 756, § 20.)

CODIFICATION

Section 20 of act June 26, 1934, is classified in its entirety to 31 U.S.C. § 725s.

§ 47–111. Repealed. Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

Section, act June 26, 1912, 37 Stat. 184, ch. 182, § 8, prohibited payment of moneys out of appropriated funds for membership fees of officers and employees of District of Columbia in a society or association, or for expenses of attendance of any such person at any meeting or convention of members of a society or association, unless authorized by specific appropriations, or by express terms in a general appropriation, and is now covered by 5 U.S.C. § 5946.

§ 47–112. Disbursing officer — Appointment — Bond— Duties.

The disbursing officer shall be appointed by the Commissioners, and shall give bond to the United States in the sum of fifty thousand dollars, for the benefit of the United States, the District of Columbia, the Commissioners of the District of Columbia, and all persons interested conditioned for the faithful performance of the duties of his office in the disbursing and accounting, according to law, for all moneys of the United States and of the District of Columbia that may come into his hands, which bond shall be approved by the said Commissioners and the Secretary of the Treasury and be filed in the office of the Secretary of the Treasury: *Provided,* That advances in money shall be made, on the requisition of said Commissioners, to the said disbursing officer instead of to the Commissioners, and he shall account for the same as required by section 47–309. Said disbursing officer shall be subordinate

to the commissioners, and they shall in every respect be responsible to the United States, the District of Columbia, and to individuals for the acts and doings of said disbursing officer.

The disbursing officer is authorized to pay laborers and employees of the District of Columbia, and such payments shall be made upon pay rolls or other vouchers audited and approved by the auditor of the District of Columbia, and certified by the Commissioners as required by section 47–309. Said pay rolls and other vouchers shall be included in the account of the Commissioners.

The accounts of the disbursing officer shall be audited by the auditor of the District of Columbia, who shall promptly forward the same to the Commissioners for their approval. (Mar. 3, 1891, 26 Stat. 1064, ch. 546; July 14, 1892, 27 Stat. 151, ch. 171; June 30, 1898, 30 Stat. 526, ch. 540.)

CODIFICATION

Section consolidates acts Mar. 3, 1891, July 14, 1892, and June 30, 1898.

TRANSFER OF FUNCTIONS

All functions of the Disbursing Office and of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. Reorganization Order No. 20 dated Nov. 10, 1952, transferred to the Disbursing Office and Accounting Office of the Finance Office of the Department of General Administration the functions of the Disbursing Office including the functions of all officers, employees and subordinate agencies. The same order provided that the previously existing Disbursing Office was abolished. The function of auditing the accounts of the disbursing officer was transferred from the Auditor to the Internal Audit officer by Reorganization Order No. 19. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCE

Requisitions and vouchers, see § 47–310.

NOTES TO DECISIONS

In general

This section does not impose responsibility for the faults of the disbursing clerk upon the auditor. *District of Columbia* v. *Petty* (1913, 33 S. Ct. 881, 229 U. S. 593, 57 L. Ed. 1343).

§ 47–112a. Examination of vouchers and disbursement thereon—Accountability.

Notwithstanding any other provision of law, order, or regulation, the disbursing officer of the District of Columbia shall (1) disburse moneys only upon, and in strict accordance with, vouchers duly certified by the auditor of the District of Columbia or by one or more employees in the office of such auditor duly authorized in writing by such auditor to certify such vouchers; (2) make such examination of vouchers as may be necessary to ascertain whether they are in proper form and duly certified; and (3) be held accountable accordingly. (July 30, 1951, 65 Stat. 124, ch. 246, § 1.)

EFFECTIVE DATE

Section 5 of act July 30, 1951, provided that: "This Act [adding this section and sections 47–112b, 47–120a and 47–120b] shall become effective on the first day of the third month following the date of its enactment [July 30, 1951]."

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952.

Functions relating to the certifying of vouchers set out in the foregoing section were transferred from the Auditor of the District of Columbia to the Accounting officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated Nov. 10, 1952. These orders were issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, administration.

§ 47–112b. Exceptions to liability for overpayments on Government bills of lading or transportation requests.

Notwithstanding the provisions of sections 47–112a, 47–112b, 47–120a and 47–120b, or any other Act to the contrary, neither the disbursing officer of the District of Columbia nor the auditor of the District of Columbia or any employee in his office authorized by him to certify vouchers, pursuant to the provisions of sections 47–112a, 47–112b, 47–120a and 47–120b, shall be held liable for overpayments made for transportation furnished on Government bills of lading or transportation requests when said overpayments are due to the use of improper transportation rates, classifications, or the failure to deduct the proper amount under land-grant laws or equalization and other agreements. (July 30, 1951, 65 Stat. 125, ch. 246, § 3.)

EFFECTIVE DATE

Section effective on the first day of the third month following July 30, 1951, see note under § 47–112a.

TRANSFER OF FUNCTIONS

All functions of the Disbursing Office including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952.

The functions described in this section which related to the Auditor were transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated Nov. 10, 1952. These orders were issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

§ 47–113. Repealed. July 30, 1951, 65 Stat. 128, ch. 250, § 4.

Section, act June 6, 1900, 31 Stat. 555, ch. 789, which related to deputy disbursing officer, is now covered by §§ 47–113a to 47–113c.

§ 47–113a. Appointment of deputy disbursing officer and assistant disbursing officers—Compensation.

The Commissioners of the District of Columbia shall appoint a deputy disbursing officer of the District of Columbia and such assistant disbursing officers of the District of Columbia as they may, in their discretion and subject to available appropriations, consider necessary, at compensation to be fixed in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154 of title 5, U.S. Code [relating to the classification of government employees and related matters], such deputy disbursing officer and assistant disbursing officers to be subordinated to the disbursing officer, District of Columbia. (July 30, 1951, 65 Stat. 127, ch. 250, § 1.)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509, and 7154, of title 5, U.S. Code, relating to the classification of government employees and related mat-

ters," was substituted for "the Classification Act of 1949", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in a note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

TRANSFER OF FUNCTIONS

All functions of the Disbursing Office including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. Reorganization Order No. 20 dated Nov. 10, 1952, abolished the previously existing Disbursing Office and transferred its functions to the Finance Office of the Department of General Administration. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

§ 47–113b. Authority and duties of deputy disbursing officer and assistant disbursing officers.

The deputy disbursing officer and the several assistant disbursing officers each shall have authority to make disbursements as an agent of the disbursing officer, District of Columbia; to sign checks drawn against disbursing accounts of the disbursing officer, District of Columbia, with the Treasurer of the United States; and to discharge all other duties required according to law or regulation to be performed by the disbursing officer, District of Columbia. (July 30, 1951, 65 Stat. 127, ch. 250, § 2.)

TRANSFER OF FUNCTIONS

Functions of the Disbursing Officer including the functions of all officers, employees and subordinate agencies transferred to Department of General Administration, see note under § 47–112.

§ 47–113c. Penalties for official misconduct of disbursing officers—Bond.

The deputy disbursing officer and the several assistant disbursing officers shall each be subject, for his official misconduct, to all liabilities and penalties prescribed by law in like cases for the disbursing officer, District of Columbia; and the deputy disbursing officer and each assistant disbursing officer shall give bond to the United States for the benefit of the United States, the District of Columbia, the Commissioners of the District of Columbia, and the disbursing officer, District of Columbia, conditioned for the faithful performance of the duties of each of their offices in the disbursing and accounting, according to law, for all moneys of the United States and of the District of Columbia that may come into his hands, which bond shall be in the amount required by the Commissioners of the District of Columbia, but to be not less than $25,000, and to be subject to approval by the said Commissioners and the Secretary of the Treasury and to be filed in the office of the Secretary of the Treasury. (July 30, 1951, 65 Stat. 127, ch. 250, § 3.)

TRANSFER OF FUNCTIONS

Functions of the Disbursing Office including the functions of all officers, employees and subordinate agencies transferred to Department of General Administration, see note under § 47–112.

§§ 47–114 to 47–118. Omitted.

Section 47–114, act Apr. 27, 1904, 33 Stat. 381, ch. 1628, which authorized advances to the major and superintendent of police, is omitted as superseded by section 1–263.

Section 47–115, act Feb. 25, 1929, 45 Stat. 1289, ch. 314, which authorized advances to the director of public welfare, is omitted as superseded by section 1–263.

Section 47–116, act Feb. 25, 1929, 45 Stat. 1286, ch. 314, which authorized advances to the chief probation officer of the juvenile court, is omitted as superseded by section 1–263.

Section 47–117, act Feb. 25, 1929, 45 Stat. 1286, ch. 314, which authorized advances to the superintendent of penal institutions, is omitted as superseded by section 1–263.

Section 47–118, acts June 30, 1945, 59 Stat. 278, ch. 209 § 1; July 9, 1946, 60 Stat. 507, ch. 544, § 1; July 25, 1947, 61 Stat. 433, ch. 324, § 1; June 19, 1948, 62 Stat. 543, ch. 555, § 1; June 29, 1949, 63 Stat. 303, ch. 279, § 1; July 18, 1950, 64 Stat. 347, ch. 467, § 1; Aug. 3, 1951, 65 Stat. 172, ch. 292, § 11; July 5, 1952, 66 Stat. 391, ch. 576, § 1; July 31, 1953, 67 Stat. 295, ch. 299, § 11; July 5, 1955, 69 Stat. 262, ch. 272, § 9, which authorized advances to the librarian of the Public Library, is omitted as superseded by section 1–263.

§ 47–119. Notification to disbursing officer of objections to allowance of disbursements.

When differences arise in the examination of the accounts of the disbursing officer of the District of Columbia, calling for the suspension of any item in said acounts, it shall be the duty of the General Accounting Office to notify the auditor of the District of Columbia in connection with the disbursing officer of the District of Columbia of the grounds of such objections resulting in said suspensions, in order that said auditor in connection with said disbursing officer may by explanation if possible remove said grounds of suspension. (July 1, 1902, 32 Stat. 592, ch. 1352; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

TRANSFER OF FUNCTIONS

All functions of the Disbursing Office and the Office of the Auditor, including the functions of all officers, employees and subordinate agencies, were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952.

The functions of the Auditor in connection with the suspension of items in accounts of the disbursing officer were transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated Nov. 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

"General Accounting Office" was substituted for "Auditor for the State and other departments who settles said accounts" in view of act June 10, 1921, which transferred certain functions of the Auditor to the General Accounting Office. See 31 U.S.C. § 44.

CROSS REFERENCE

Adjustment of controverted accounts, see § 47–309.

§ 47–120. Auditor—Duties.

It shall be the duty of the auditor of the District of Columbia to audit all accounts against the said District, and also approve and certify the same. He shall keep a record of all bills certified by him, their amounts, the appropriation to which they are chargeable, and the date of approval. He shall retain in his office the originals of all contracts and agreements not otherwise provided for. He shall also examine and audit all accounts, not otherwise provided for by law. He shall countersign all warrants if he shall find the same correct. (Leg. Assem., Aug. 23, 1871, ch. 108, § 10, p. 146.)

CODIFICATION

Provisions which required the auditor to give a bond in the sum of $20,000, conditioned for the faithful discharge of his duties, were omitted in view of act July 30, 1951, 65 Stat. 125, ch. 246, § 2. See § 47–120a.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director of General Administration by Reorganization Order No. 3 of the Board of Commissioners. Reorganization Order No. 20 abolished the previously existing Office of the Auditor and transferred all of the functions referred to in this section to the Accounting Officer, Finance Office, Department of General Administration with the exception of the functions covered by the sentence, "He shall also examine and audit all accounts, not otherwise provided for by law". These latter functions were transferred to the Department of General Administration by Reorganization Order No. 3. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

§ 47–120a. Liability of auditor or employees—Exceptions—Bond.

The auditor of the District of Columbia or any employee in his office duly authorized in writing by such auditor who certifies a voucher shall (1) be held responsible for the existence and correctness of the facts recorded in the certificate or otherwise stated in the voucher or its supporting papers, including the correctness of computations on such voucher, and for the legality of the proposed payment under the appropriation or fund involved; (2) be required to give bond to the United States and to the District of Columbia, with good and sufficient surety, approved by the Secretary of the Treasury, in such amount as may be determined by the Commissioners of the District of Columbia; and (3) be held responsible for and required to make good to the United States or to the District of Columbia the amount of any illegal, improper, or incorrect payment resulting from any false, erroneous, or misleading certification made by him as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved: *Provided*, That the Comptroller General may, in his discretion, relieve such certifying officer or employee of liability for any payment otherwise proper whenever he finds (1) that the certification was based on official records and that such certifying officer or employee did not know, and by reasonable diligence and inquiry could not have ascertained, the actual facts, or (2) that the obligation was incurred in good faith, that the payment was not contrary to any statutory provision specifically prohibiting payments of the character involved, and that the United States or the District of Columbia has received value for such payment: *Provided further*, That the bond required by this section to be given by the auditor of the District of Columbia shall be conditioned for the faithful discharge of all of the duties of his office and shall be in lieu of any other bond now required by law. (July 30, 1951, 65 Stat. 125, ch. 246, § 2.)

EFFECTIVE DATE

Section effective on the first day of the third month following July 30, 1951, see note under § 47–112a.

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952.

The functions of the auditor relating to certifying officers and employees were transferred from the auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated Nov. 10, 1952, as amended by Reorganization Order No. 25 dated Dec. 30, 1952. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and the plan are set out in the Appendix to Title 1, Administration.

§ 47–120b. Enforcement of liability against persons certifying—Application for decision by Comptroller General.

The liability of any person who certifies any voucher pursuant to the provisions of sections 47–112a, 47–112b, 47–120a and 47–120b shall be enforced in the same manner and to the same extent as now provided by law with respect to enforcement of the liability of disbursing and other accountable officers; and they shall have the right to apply for and obtain a decision by the Comptroller General on any question of law involved in a payment on any vouchers presented to them for verification. (July 30, 1951, 65 Stat. 125, ch. 246, § 4.)

EFFECTIVE DATE

Section effective on the first day of the third month following July 30, 1951, see note under § 47–112a.

§ 47–121. Auditor—Countersigning checks.

The auditor of the District of Columbia shall continue to prepare and countersign all checks issued by the disbursing officer, and no check involving disbursement of public moneys by the disbursing officer shall be valid unless countersigned by the auditor of the District of Columbia. (July 1, 1902, 32 Stat. 592, ch. 1352.)

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952.

The functions of the auditor in connection with the preparation and countersigning of checks were transferred from the auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated Nov. 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

§ 47–122. Chief clerk to act in event of absence or disability of auditor.

The chief clerk of the auditor's office shall, in the necessary absence or inability from any cause of the auditor, perform his duties without additional compensation, and shall during the presence of the auditor perform such duties as shall be prescribed by the auditor; and the auditor may require the said chief clerk to give bond for the faithful performance of such duties; but the auditor shall in every respect be responsible to the United States, the District of Columbia, and to individuals, as now provided by law. (Aug. 6, 1890, 26 Stat. 295, ch. 724; Mar. 2, 1911, 36 Stat. 969, ch. 192.)

CODIFICATION

Section consolidates acts Aug. 6, 1890, and Mar. 2, 1911.

TRANSFER OF FUNCTIONS

All functions of the auditor of the District of Columbia including the functions of all officers, employees and subordinate agencies were transferred to a new agency, "The Department of General Administration" headed by a "Director of General Administration" by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. Reorganization Order No. 20 dated Nov. 10, 1952, transferred the functions of the auditor referred to in this section to the Accounting Officer, Finance Office, Department of General Administration. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

§ 47–123. Auditor to audit all accounts.

All accounts for the disbursement of appropriations made either from the revenues of the District of Columbia or jointly from the revenues of the United States and the District of Columbia shall be audited by the auditor of the District of Columbia before being transmitted to the General Accounting Office, unless otherwise specifically provided in the law making such appropriations: *Provided,* That this provision shall not apply to disbursements on account of the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia, and for interest and sinking fund on the funded debt of the District of Columbia, which disbursement shall continue to be audited as heretofore provided by law. (June 30, 1898, 30 Stat. 526, ch. 540; June 10, 1921, 42 Stat. 24, ch. 18, § 304; June 7, 1934, 48 Stat. 926, ch. 426; June 25, 1936; 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CODIFICATION

"United States Court of Appeals for the District of Columbia Circuit" has been substituted for "United States Court of Appeals for the District of Columbia", to conform with the correct name of the court. See 28 U.S.C. §§ 41, 43.

CHANGE OF NAME

Act June 7, 1934, substituted "United States Court of Appeals for the District of Columbia" for "court of appeals."

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

TRANSFER OF FUNCTIONS

All functions of the Office of Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. The order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

"General Accounting Office" was substituted for "accounting officers of the Treasury" in view of act June 10, 1921, which transferred certain functions of the Treasury Department to the General Accounting Office. See U.S. Code, title 31, § 44.

§ 47–124. Amount of disbursing officers' outstanding checks to be deposited in Treasury.

At the beginning of each fiscal year, or as soon thereafter as may be practicable, the respective amounts represented by checks drawn by the disbursing officer of the District of Columbia, or by any former disbursing officer of said District, which have remained outstanding, unsatisfied, and unpaid for three years or more, shall be deposited by the treasurer of the United States and covered back into the treasury by warrant to the credit of a permanent appropriation account to be denominated "Outstanding liabilities, District of Columbia," and shall be carried to the credit of the respective parties in whose favor such checks were issued upon the books of the auditor of the District of Columbia, in like manner as the amounts represented by checks of disbursing officers of the United States which have remained outstanding, unsatisfied, and unpaid for three years or more are covered back into the treasury. (Apr. 28, 1904, 33 Stat. 574, ch. 1827, § 1.)

TRANSFER OF FUNCTIONS

All functions of the Disbursing Office and the Office of Auditor including the functions of all officers, employees and subordinate agencies, were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952.

The functions of the auditor with respect to outstanding checks were transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated Nov. 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

§ 47–125. Disbursing officer's checks—Payment to holders of outstanding checks.

The payee or bona fide holder of any check drawn by the disbursing officer of the District of Columbia, or by any former disbursing officer of said District, the amount of which has been so covered back into the Treasury of the United States, shall, upon application accompanied with competent and sufficient proof, and the surrender of such check, be paid the amount thereof from the said appropriation account to be denominated "Outstanding liabilities, District of Columbia," upon a claim therefor duly audited and approved by the auditor of the District of Columbia, subject to like conditions and provisions as those imposed and required by the Revised Statutes of the United States, with respect to the payment of amounts represented by checks of disbursing officers of the United States which have been covered back into the Treasury to the credit of outstanding liabilities. (Apr. 28, 1904, 33 Stat. 574, ch. 1827, § 2.)

TRANSFER OF FUNCTIONS

All functions of the Disbursing Office and the Office of Auditor including the functions of all officers, employees and subordinate agencies, were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952.

The functions of the auditor with respect to the audit and approval of claims based on outstanding checks were transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated Nov. 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

§ 47–126. Fees collected to be paid into Treasury of the United States.

Fees collected by the District of Columbia shall be paid for each fiscal year into the Treasury of the United States to the credit of the District of Columbia unless otherwise provided by law. (June 26, 1912, 37 Stat. 184, ch. 182, § 10; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; Apr. 24, 1926, 44 Stat. 322, ch. 176, § 1; June 7, 1926, 44 Stat. 697, ch. 480.)

CODIFICATION

This section has been reworded to conform to existing law. It formerly made provision for payment of fees into the Treasury to the credit of the United States and the District of Columbia in the same proportion as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia. Act June 29, 1922, 42 Stat. 668, 669, ch. 249, § 1, provided as follows:

"Annually, from and after July 1, 1922, 60 per centum of such expenses of the District of Columbia as Congress may appropriate for shall be paid out of the revenues of the District of Columbia derived from taxation and privileges, and the remaining 40 per centum by the United States excepting such items of expense as Congress may direct shall be paid on another basis, * * * and that after June 30, 1922, any revenue derived from any activity or source whatever, including motor-vehicle licenses, not otherwise herein disposed of, which activity or source of revenue is appropriated for by both the United States and the District of Columbia, shall be divided between the two in the same proportion that each has contributed thereto."

The appropriation act of June 7, 1924, 43 Stat. 539, ch. 302, § 1, made a lump-sum appropriation as follows: "Any revenue (not including the proportionate share of the United States in any revenue arising as the result of the expenditure of appropriations made for the fiscal year 1924 and prior fiscal years) now required by law to be credited to the District of Columbia and the United States in the same proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the District of Columbia, and in addition, $9,000,000 is appropriated, out of any money in the Treasury not otherwise appropriated, and all the remainder out of the combined revenues of the District of Columbia and such advances from the Federal Treasury as are authorized in the District of Columbia Appropriation Act for the fiscal year 1923, namely:"

Subsequent appropriation acts contained similar provisions, changing only the amount of the appropriation and the fiscal year (see act of June 12, 1940, 54 Stat. 307, ch. 333, § 1). These appropriation acts did not, however, provide for the repeal of the provisions of act June 29, 1922. This was done by the act of May 16, 1938, 52 Stat. 375, § 8, which added Title 10 to the District of Columbia Revenue Act of 1937, 50 Stat. 673, ch. 690.

From the foregoing it would seem that there is no longer any apportionment of expenses or segregation of revenues unless specific provision is made therefor by Congress subsequent to the repeal provision.

Provisions which related to specific fees were omitted since many were obsolete and they were not complete, and since the section is general in that it requires the payment of all fees into the Treasury of the United States.

§ 47–126a. Fees and fines.

There shall be credited to the District of Columbia that proportion of the fees and fines collected by the United States District Court for the District of Columbia, including fees and fines collected by the offices of the clerk of that court, of the Register of Wills of the District of Columbia, and of the United States marshal for the District of Columbia, as the amount paid by the District of Columbia toward salaries and expenses of such court and of the offices of the United States attorney for the District of Columbia and of the United States marshal for the District of Columbia bears to the total amount of such salaries and expenses; and such proportion of the fees and fines, if any, collected by the United States Court of Appeals for the District of Columbia Circuit, including fees and fines, if any, collected by the office of the clerk of that court, as the amount paid by the District of Columbia toward the salaries and expenses of such court bears to the total amount of such salaries and expenses. (July 26, 1939, 53 Stat. 1107, ch. 367, title III; June 25, 1948, 62 Stat. 909, ch. 646, § 1; Aug. 2, 1949, 63 Stat. 491, ch. 383, § 7.)

AMENDMENT

1949–Act Aug. 2, 1949, inserted the words "of the Register of Wills of the District of Columbia" after the words "including fees and fines collected by the offices of the clerk of that court," and deleted the words "On and after July 1, 1939," at the beginning of the section.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act Aug. 2, 1949, effective July 1, 1949, see section 10 of act Aug. 2, 1949, set out as a note under section 19–401.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States Attorney" for "United States District Attorney." See 28 U.S.C. § 501.

TRANSFER OF SECTION

This section was formerly section 330 of former Title 11.

§§ 47–127 to 47–130. Omitted.

CODIFICATION

Section 47–127, acts July 18, 1888, 25 Stat. 316, ch. 676; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7, which related to the disposition of fees collected by the inspector of gas and meters and by the harbor-master, is omitted as superseded by § 47–126.

Section 47–128, act June 11, 1896, 29 Stat. 394, ch. 419, which related to the disposition of all rents, fees and income derived from the markets operated by the District of Columbia, is omitted as superseded by § 47–126.

Section 47–129, acts Mar. 2, 1911, 36 Stat. 975, ch. 192; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7, which related to the disposition of collections for work done under the assessment and permit system, is omitted as superseded by § 47–126.

Section 47–130, act Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7, which required payment of fees, fines and revenues into the Treasury of the United States, is omitted as superseded by § 47–130a.

§ 47–130a. Revenues credited to District of Columbia general fund.

Any revenue now required by law to be credited to the District of Columbia and the United States in the proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the general fund of the District of Columbia. (June 28, 1944, 58 Stat. 533, ch. 300, § 18.)

§ 47–131. Repealed. October 3, 1964, 78 Stat. 1001, Pub. L. 88–622, § 6; effective July 1, 1963.

Section, act July 9, 1946, 60 Stat. 514, ch. 544, § 1, established a working capital fund for industrial enterprises at the workhouse and reformatory. The matter is now covered by sections 24–451 to 24–455.

Section 6 of the act also repealed the proviso in the par following the caption "Operating Expenses" under the heading "DEPARTMENT OF CORRECTIONS" in the first section of the act of July 5, 1952, 66 Stat. 380. This matter was not classified to the code.

§ 47–132. Money received from sale of animals and materials to be paid into Treasury.

All moneys received from the sales of animals or materials of any sort, purchased under appropriations made for the District of Columbia since July 1, 1878, other than for the water department, shall be paid into the treasury of the United States, to the credit of the District unless otherwise provided by law. (Mar. 2, 1889, 25 Stat. 808, ch. 370, § 3; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7.)

CODIFICATION

Provisions relating to the manner of crediting the funds deposited in the Treasury of the United States were changed to conform to later acts. See codification note under § 47–126.

§ 47–133. Appropriations for playground employees to be paid from District revenues.

CODIFICATION

Section, act June 26, 1912, 37 Stat. 153, ch. 182, which required the payment of appropriations for salaries of employees of the playgrounds wholly out of the revenues of the District of Columbia, is omitted since all expenses of the District of Columbia are provided for in one appropriation act and all revenues are deposited wholly to the credit of the District.

§ 47–134. Repealed. Sept. 30, 1966, 80 Stat. 857, Pub. L. 89–610, title V, § 502.

Section, act July 26, 1939, 53 Stat. 1085, ch. 367, title I, authorized appropriations for fiscal year June 30, 1940 and each fiscal year thereafter, as the annual payment by United States toward defraying expenses of government of District of Columbia, the sum of $6,000,000. The provisions were superseded, and are now covered, by §§ 47–2501a and 47–2501b.

For severability of provisions of act Sept. 30, 1966, Pub. L. 89–610, repealing this section, and other enacting clauses thereof, see §§ 1002–1005 of such act, set out as a note under § 25–124.

§ 47–135. Investment of District of Columbia's funds in United States Government securities—Deposit of interest to credit of appropriate fund—Sale and exchange of such securities.

On and after June 29, 1956 the Commissioners are authorized in their discretion to invest and reinvest at any time in United States Government securities, with the approval of the Secretary of the Treasury, any part of the general, speical, or trust funds, of the District of Columbia, not needed to meet current expenses, to deposit the interest accruing from such investments to the credit of the fund from which the investment was made, and the Secretary of the Treasury is authorized to sell or exchange such securities for other Government securities, and deposit the proceeds to the credit of the appropriate fund. (June 29, 1956, 70 Stat. 453, ch. 479, § 7.)

CODIFICATION

Section is from the District of Columbia appropriation Act, 1957, act June 29, 1956. Similar provisions were contained in the appropriation acts for previous years as follows:

1956—July 5, 1955, 69 Stat. 262, ch. 272, § 7.
1955—July 1, 1954, 68 Stat. 394, ch. 449, § 8.
1954—July 31, 1953, 67 Stat. 299, § 8.
1953—July 5, 1952, 66 Stat. 390, ch. 576, § 8.
1952—Aug. 3, 1951, 65 Stat. 172, ch. 292, § 8.
1951—July 18, 1950, 64 Stat. 369, ch. 467, § 9.
1950—June 29, 1949, 63 Stat. 324, ch. 279, § 9.
1949—June 19, 1948, 62 Stat. 588, ch. 555, § 9.
1948—July 25, 1947, 61 Stat. 448, ch. 324, § 9.
1946—June 30, 1945, 59 Stat. 294, ch. 209, § 8.

§ 47–136. Maintenance and repairs of vehicles—Working fund.

The Commissioners are authorized to establish a permanent working fund, which shall be available without fiscal-year limitation, for necessary expenses of maintenance and repair of vehicles of the Government of the District of Columbia; and said fund shall be reimbursed, or credited in advance if required by the Director, Department of Highways, for the costs of all work performed thereunder. (July 1, 1954, 68 Stat. 396, ch. 449, § 18.)

§ 47–137. Working fund for printing, duplicating, and photographing.

The Commissioners are authorized to establish a working fund without fiscal-year limitation for the purpose of printing, duplicating, and photographing; and the unexpended balances in the miscellaneous trust fund accounts "Operating Account, Printing" and "Operating Account, Blueprinting" shall be deposited to said working fund; and the fund shall be reimbursed for all services performed thereunder. (July 5, 1955, 69 Stat. 263, ch. 272, § 14.)

CODIFICATION

Section is from the District of Columbia Appropriation Act, 1956, act July 5, 1955. Similar provisions were contained in act July 1, 1954, 68 Stat. 395, ch. 449, § 17.

§ 47–138. Restoration of lapsed appropriations.

The Secretary of the Treasury is authorized to restore from lapsed appropriations amounts certified by the Commissioners, or their designated representatives, as being necessary for the payment of audited claims under such appropriations. (Aug. 6, 1958, 72 Stat. 512, Pub. L. 85–594, § 14.)

§ 47–139. "Capital Outlay" appropriations available without regard to fiscal year project limitations.

Amounts appropriated under "Capital Outlay," together with such amounts previously appropriated under "Capital Outlay," shall be available within the appropriations involved without regard to fiscal year project limitations. (July 23, 1959, 73 Stat. 235, Pub. L. 86–104, § 1.)

§ 47–140. Trust funds held by District of Columbia—Lack of communication by owners of fund—Notice to owners that claims will be barred.

In any case in which any money has been held in trust for, or for the account of, any person by the government of the District of Columbia pursuant to statute or otherwise, and no communication, in writing or otherwise as indicated by a written memorandum, has been received by the government of the District of Columbia concerning such money from the person entitled thereto, for a period of not less than ten years, the Commissioners shall send notice by registered or certified mail to the last known address of the person for whom such money is being held. Such mailed notice shall contain a statement that money is being held for such person and if no written claim for the return thereof is submitted to the Commissioners within sixty days of the date such notice is mailed, any future claim therefor will, subject to the provisions of section 47–141, be forever barred. (Dec. 18, 1963, 77 Stat. 419, Pub. L. 88–211, § 1.)

§ 47–141. Publication of notice relating to unclaimed funds—Form and contents of notice—Deposit of unclaimed funds in the Treasury of the United States.

(a) Not less than sixty days after the mailing of any notice pursuant to section 47–140 the Commissioners shall publish notice once each week for two successive weeks in a newspaper of general circulation in the District of Columbia. Such published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Unclaimed Money Held by the District of Columbia" and shall contain:

(1) The names and the last known addresses, if any, of the persons for whom moneys are being held (listed in alphabetical order of their surnames).

(2) A statement setting forth the substance of subsection (b) of this section.

(b) If no written claim for the return of any such money is submitted to the Commissioners by the date specified in the published notices, which date shall be not less than ninety days from the date of publication of the second notice, such moneys shall be deposited in the Treasury of the United States to the credit of the District of Columbia and all claims for such money shall be forever barred. (Dec. 18, 1963, 77 Stat. 420, Pub. L. 88–211, § 2.)

§ 47–142. Small sums—Exemptions from notice requirements.

In any case where any money held in trust by the government of the District of Columbia for the period of time and under the same circumstances as specified in section 47–140 is in an amount less than the cost, as estimated by the Commissioners, of giving notice as required by sections 47–140 and 47–141, such money may be deposited in the Treasury of the United States to the credit of the District of Columbia without the necessity of complying with the notice requirements of sections 47–140 and 47–141, and after such deposit all claims for such money shall be forever barred. (Dec. 18, 1963, 77 Stat. 420, Pub. L. 88–211, § 3.)

§ 47–143. Deductions of expenses upon refunds to depositors—Deposit of deductions in the Treasury of the United States.

Upon the return of any money deposited with the government of the District of Columbia to the person making such deposit after notice has been given such person pursuant to sections 47–140 to 47–144, the Commissioners are authorized to deduct from such returned money the costs of mailing and publishing notices required by sections 47–140 to 47–144; and shall deposit the amount so deducted in the Treasury of the United States to the credit of the District of Columbia. (Dec. 18, 1963, 77 Stat. 420, Pub. L. 88–211, § 4.)

§ 47–144. "Commissioners" defined.

As used in sections 47–140 to 47–144, the word "Commissioners" means the Board of Commissioners of the District of Columbia or their designated agent. (Dec. 18, 1963, 77 Stat. 420, Pub. L. 88–211, §5.)

Chapter 2.—BUDGET ESTIMATES

Sec.
47–201. Salaries of force for protection of courthouse—Payment—Estimates.
47–202. Estimates—Repairs to schools.
47–203. Estimates for schools to be in accordance with 5-year building program.
47–204. Certain expenses of United States District Court for the District of Columbia.
47–205. Commissioners' annual estimates—To include report of assignment of certain market employees.
47–206. Estimates for employees and for maintenance of sewers.
47–207 Estimates for employees for maintenance of highway bridge and approaches.
47–208. Estimates for witnesses and securing evidence in claims against the District of Columbia.
47–209. Estimates for assessment of real estate.
47–210. Estimates for water department.
47–211. Estimates for expenses of District—Order of arrangement.
47–212. Publication of estimates of the District.
47–213. Estimates for offices of probation officer and Register of Wills, and Commission on Mental Health.

§ 47–201. Salaries of force for protection of courthouse—Payment—Estimates.

The salaries of the force necessary for the care and protection of the courthouse in the District of Columbia and of the salary of the Superintendent of the Washington Asylum and Jail shall be paid out of the revenues of the District of Columbia and the Treasury of the United States in the manner prescribed by the District of Columbia Appropriation Acts for the respective years for which such sums are provided, and estimates for such expenses shall each year hereafter be submitted in the annual estimates for the expenses of the government of the District of Columbia. (July 31, 1894, 28 Stat. 202, ch. 174; Mar. 2, 1911, 36 Stat. 1003, ch. 192; June 29, 1922, 42 Stat. 668, ch. 249; June 25, 1938, 52 Stat. 1125, ch. 681, § 1.)

CODIFICATION

Act June 29, 1922, which formed the basis for percentage liabilities, was repealed by act May 16, 1938, 52 Stat. 375, ch. 223, § 8, adding title X to act Aug. 17, 1937, 50 Stat. 673, ch. 690 (§ 47–502 of this Code). However, acts making appropriations for the judiciary, have, since act Apr. 27, 1938, 52 Stat. 265, ch. 180, § 1, down to and including the Judiciary Appropriation Act, 1967 (act Nov. 8, 1966, 80 Stat. 1500, Pub. L. 89–797, title IV, § 402), contained the following provision: "Sixty per centum of the expenditures for the District Court of the United States for the District of Columbia from all appropriations under this title and 30 per centum of the expenditures for the United States Court of Appeals for the District of Columbia from all appropriations under this title shall be reimbursed to the United States from any funds in the Treasury to the credit of the District of Columbia."

The Deficiency Appropriation Act of June 25, 1938, and other such acts including the Second Deficiency Appropriations Act of June 27, 1940, 54 Stat. 639, ch. 437, contained the following language: "The foregoing sums for the District of Columbia, unless otherwise therein specifically provided, shall be paid out of the revenues of the District of Columbia and the Treasury of the United States in the manner prescribed by the District of Columbia Appropriation Acts for the respective years for which such sums are provided."

Later deficiency and supplemental appropriation acts, if they provided additional or supplemental appropriations for the District of Columbia, have contained, under the heading "Division of Expenses", the following provision: "The sums appropriated in this chapter for the District of Columbia shall, unless otherwise specifically provided for, be paid out of the general fund of the District of Columbia, as defined in the District of Columbia Appropriation Act for the fiscal year involved". See, for example, Deficiency Appropriation Act, 1964 (act June 9, 1964, 78 Stat. 206, Pub. L. 88–317, ch. III), Second Supplemental Appropriation Act, 1965 (act Apr. 30, 1965, 79 Stat. 82,

Pub. L. 89–16, ch. II), and Supplemental Appropriation Act, 1966 (act Oct. 31, 1965, 79 Stat. 1134, Pub. L. 89–309, ch. II).

The Federal Government now makes a lump-sum appropriation for the District of Columbia. See §§ 47–2501a and 47–2501b.

CHANGE OF NAME

The Washington jail and the Washington asylum were consolidated by act Mar. 2, 1911, into one institution called the "Washington Asylum and Jail."

TRANSFER OF FUNCTIONS

All functions of the Budget Office including the functions of all officers, employees and subordinate agencies were transferred to the Director of the Department of General Administration by Reorganization Order No. 3 dated Aug. 28, 1952. Reorganization Order No. 24 dated Dec. 30, 1952, established a Budget Office in the Department of General Administration headed by a Budget Officer. These orders were issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

All functions with respect to the operation, maintenance, and custody of office buildings owned by the Federal Government and of office buildings or parts thereof acquired by lease, including those post-office buildings which, as determined by the Director of the Budget, are not used predominantly for post-office purposes, were, with certain exceptions, transferred to the Administrator of General Services by sections 1 and 2 of 1950 Reorg. Plan No. 18, eff. July 1, 1950, 15 F.R. 3177, 64 Stat. 1270, set out as a note under 40 U.S.C. § 490.

CODIFICATION

For provisions relating to the manner of payment of expenses of the District of Columbia, see codification note under § 47–201.

§ 47–202. Estimates—Repairs to schools.

A detailed statement of the expenditure of the appropriation made for repairs and improvements to school buildings and grounds and for repairing and renewing heating, plumbing, and ventilating apparatus, and installation of sanitary drinking fountains in buildings not supplied with same, and the taking down, transferring, and the re-erection of portable schools shall be submitted with the annual estimates. (Mar. 3, 1915, 38 Stat. 910, ch. 80.)

§ 47–203. Estimates for schools to be in accordance with 5-year building program.

Estimates of expenditures for buildings and grounds for the public schools of the District of Columbia, shall hereafter be prepared in accordance with the provisions of the Act of Congress approved February 26, 1925. (Feb. 26, 1925, 43 Stat. 994, ch. 342, § 9.)

REFERENCES IN TEXT

Act Feb. 26, 1925, referred to in the text, is classified in part to § 31–804 and this section.

§ 47–204. Certain expenses of United States District Court for the District of Columbia.

Sixty per centum of the expenditures for all of the expenses of the United States District Court for the District of Columbia mentioned below, to wit, fees of witnesses, fees of jurors, pay of bailiffs and criers, including salaries of deputy marshals who act as bailiffs or criers, and all miscellaneous expenses of said court, shall be reimbursed to the United States from any funds in the Treasury to the credit of the District of Columbia: *Provided*, That estimates for like expenditures for each fiscal year shall be submitted to the Commissioners of the District of Columbia for transmission with the annual estimates of the District of Columbia. (June 30, 1906, 34 Stat. 763, ch. 3914, § 7; June 29, 1922, 42 Stat. 668, ch. 249; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

Payment of certain expenses of United States Courts by Director of the Administrative Office, see 28 U.S.C. § 601 et seq.

§ 47–205. Commissioners' annual estimates—To include report of assignment of certain market employees.

The commissioners each year in the annual estimates shall report to Congress the assignment of the market masters, assistant market masters, watchmen, and laborers to the various markets and offices. (July 11, 1919, 41 Stat. 70, ch. 7.)

§ 47–206. Estimates for employees and for maintenance of sewers.

Estimates in detail shall be submitted annually for the employment of mechanics, laborers, and watchmen, and the purchase of coal, oils, waste, and other supplies for the maintenance of sewers. (June 27, 1906, 34 Stat. 494, ch. 3553.)

§ 47–207. Estimates for employees for maintenance of highway bridge and approaches.

Estimates in detail shall be submitted annually for salaries of employees, lighting, power, and miscellaneous supplies and expenses of every kind necessarily incident to the operation and maintenance of the highway bridge and approaches. (June 27, 1906, 34 Stat. 492, ch. 3553.)

CROSS REFERENCE

Jurisdiction and control over public ways, see § 7–102.

§ 47–208. Estimates for witnesses and securing evidence in claims against the District of Columbia.

The estimates for expenses incurred on account of the District of Columbia in the examination of witnesses and procuring of evidence in the matter of claims against the District of Columbia pending in any department shall be submitted in the annual estimates for the District of Columbia. (Aug. 4, 1886, 24 Stat. 252, ch. 902, § 1.)

§ 47–209. Estimates for assessment of real estate.

The commissioners of said District shall in their annual estimates include all necessary provision to carry out the provisions of law relative to the assessment of real estate, to be immediately available. (Aug. 14, 1894, 28 Stat. 285, ch. 287, § 14.)

§ 47–210. Estimates for water department.

It shall be the duty of the commissioners to include in the annual estimates of the District of Columbia estimates of the expenses of the water department. (Mar. 3, 1881, 21 Stat. 466, ch. 134, § 1.)

CROSS REFERENCE

Water supply, see § 43–1501 et seq.

§ 47–211. Estimates for expenses of District—Order of arrangement.

The estimates for expenses of the government of the District of Columbia shall be prepared and submitted each year according to the order and arrangement of the appropriation act for the year preceding, and any change in such order and arrangement and transfers of salaries from one office or department to another desired by the commissioners may be submitted by note in the estimates. (July 1, 1902, 32 Stat. 616, ch. 1352, § 4.)

§ 47–212. Publication of estimates of the District.

The annual estimates for expenses of the District of Columbia shall not be published in advance of their submission to Congress at the beginning of each regular session thereof. (Mar. 3, 1909, 35 Stat. 728, ch. 250, § 7.)

§ 47–213. Estimates for offices of probation officer and Register of Wills, and Commission on Mental Health.

The annual estimates of expenditures and appropriations necessary for the maintenance and operation of the courts submitted by the Director of the Administrative Office of the United States Courts shall include estimates of appropriations for the operation and maintenance of the office of the probation officer of the United States District Court for the District of Columbia, the office of the Register of Wills of the District of Columbia, and the Commission on Mental Health. (Aug. 2, 1949, 63 Stat. 491, ch. 383, § 6.)

Chapter 3.—COLLECTION AND DISBURSEMENT OF TAXES

Sec.
47–301. Collector of taxes to collect all revenues.
47–302. Collector of taxes—Bond.
47–303. Deputy collector of taxes—Duties—Bond.
47–304. Cashier in collector's office—Duties—Responsibility.
47–305. Account books to be kept by collector.
47–306. Certificate of taxes and assessments due—Fee.
47–307. Waiver of interest and penalties.
47–308. Collector may omit uncollectible taxes from record of assets.
47–309 Disbursement of taxes and appropriations—Vouchers—Settlement of accounts.
47–310. Requisition by Commissioners—Appropriations not to be exceeded—Accounting.
47–311 "Miscellaneous Trust Fund Deposits"—Advances—Audit—Separate accounts to be kept.
47–312. Collection of taxes by distraint—Acquisition of liens.
47–313. Jeopardy assessments of taxes by assessing authority of the District.
47–314. Abatement of taxes.

§ 47–301. Collector of taxes to collect all revenues.

The collector of taxes for said District shall collect all revenues of the District and deposit the amounts collected daily with the Treasurer of the United States. (Mar. 3, 1881, 21 Stat. 460, ch. 134.)

TRANSFER OF FUNCTIONS

All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 dated Aug. 28, 1952, and effective Sept. 2, 1952. Reorganization Order No. 20 dated Nov. 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

§ 47–302. Collector of taxes—Bond.

The collector of taxes before entering upon his duties shall execute a bond in the sum of one hundred thousand dollars, with sufficient surety or sureties, to be approved by the commissioners, conditioned for the faithful performance of the duties of his office. (Leg. Assem., Aug. 23, 1871, ch. 108, § 7; June 20, 1874, 18 Stat. 116, ch. 337, § 2.)

§ 47–303. Deputy collector of taxes—Duties—Bond.

The deputy collector of taxes shall perform such duties as may be required of him by the collector, and the collector may require the said deputy collector to give bond for the faithful performance of his duties; but the collector shall in every respect be responsible, as now provided by law, to the United States, the District of Columbia, and to individuals, as the case may be, for all moneys collected. (June 11, 1896, 29 Stat. 394, ch. 419.)

§ 47–304. Cashier in collector's office—Duties—Responsibility.

The cashier (in the collector's office) shall, in the necessary absence or inability of the collector, from any cause, perform his duties without any additional compensation; and the collector may require the said cashier to give bond for the faithful performance of such duties during the absence or inability of the collector; but the collector shall in every respect be responsible, as now provided by law, to the United States, the District of Columbia, and to individuals, as the case may be, for all moneys collected. (Aug. 6, 1890, 26 Stat. 294, ch. 724.)

§ 47–305. Account books to be kept by collector.

It shall be the duty of the collector to keep in his office account books, in which shall be entered: First, the dates of payment of all taxes; second, the amounts paid; third, the names of the persons by whom payment has been made; fourth, the years paid for; fifth, the property paid on; and sixth, the names of the persons to whom assessed. His books shall at all times be open to the inspection of any officer who may be authorized by the commissioners to examine the same. (Leg. Assem., Aug. 23, 1871, ch. 108, § 1; June 20, 1874, 18 Stat. 116, ch. 337, § 2.)

§ 47–306. Certificate of taxes and assessments due—Fee.

The collector of taxes shall furnish whenever called upon, a certified statement, over his hand and official seal, of all taxes and assessments, general and special, that may be due at the time of making said certificate; and said certificate when furnished shall be a bar to the collection and recovery from any subsequent purchaser of any tax or assessment omitted from and which may be a lien upon the real estate mentioned in said certificate, and said lien shall be discharged as to such subsequent purchaser, but shall not affect the liability of the person who owned the property at the time such tax was assessed to pay the same, mentioned in said certificate. The charge for each certificate of taxes so issued shall be one

dollar. (Feb. 6, 1879, 20 Stat. 283, ch. 50; May 13, 1892, 27 Stat. 37, ch. 74; Mar. 3, 1917, 39 Stat. 1005, ch. 160; Mar. 3, 1925, 43 Stat. 1222, ch. 477; June 25, 1938, 52 Stat. 1202, ch. 702, § 11.)

PREPARATION OF LIST OF PROPERTY SOLD FOR TAXES

The duty to prepare list of property sold for taxes for public inspection imposed upon the collector of taxes by act Mar. 3, 1917, was transferred to the assessor by act June 25, 1938. See § 47–603.

§ 47–307. Waiver of interest and penalties.

The Commissioners of the District of Columbia are authorized, in their discretion, to waive, in whole or in part, interest or penalties, or both, on unpaid taxes and special assessments due the District of Columbia, when, in their judgment, such action would be equitable or just or in the public interest. (June 25, 1938, 52 Stat. 1201, ch. 702, § 7.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 20, dated Nov. 10, 1952, provided that the Committee on Special Assessment Appeals would consider petitions filed pursuant to this section and submit its recommendations to the Commissioners. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCE

Refund of taxes and fees, see § 47–1016 et seq.

§ 47–308. Collector may omit uncollectible taxes from record of assets.

The Commissioners of the District of Columbia are authorized to direct the collector of taxes of the District of Columbia to omit from his records as assets of the District of Columbia any and all taxes, real and personal, and all special assessments which the Commissioners may determine are uncollectible, but such determination on the part of the Commissioners or the failure of the collector to carry such taxes on his records as assets shall not affect the liability of the taxpayer for the payment of said taxes. (June 25, 1938, 52 Stat. 1202, ch. 702, § 10.)

§ 47–309. Disbursement of taxes and appropriations—Vouchers—Settlement of accounts.

All taxes collected shall be paid into the Treasury of the United States, and the same, as well as the appropriations made by Congress for the expenses of the District of Columbia, shall be disbursed for the expenses of said District, on itemized vouchers, which shall have been audited and approved by the Auditor of the District of Columbia, certified by said commissioners, or a majority of them; and the accounts of said commissioners, and the tax collectors, and all other officers required to account, shall be settled and adjusted by the General Accounting Office. (June 11, 1878, 20 Stat. 105, ch. 180, § 4; June 10, 1921, 42 Stat. 24, ch. 18, § 305.)

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952.

The functions of approving and auditing itemized vouchers for District expenses were transferred from the Auditor of the District of Columbia to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20 dated Nov. 10, 1952. This order was issued by the Board of Commissioners of the District of Columbia pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

"General Accounting Office" was substituted for "accounting-officers of the Treasury Department" in view of act June 10, 1921, which transferred the functions of the Treasury Department with respect to accounting to the General Accounting Office. See 31 U.S.C. § 44.

CROSS REFERENCE

General limitation on power of Commissioners, see § 1–801.

§ 47–310. Requisition by Commissioners—Appropriations not to be exceeded—Accounting.

All moneys appropriated for the expenses of the government of the District of Columbia, together with all revenues of the District of Columbia from taxes or otherwise, shall be deposited in the Treasury of the United States, as required by the provisions of section 47–309, and shall be drawn therefrom only on requisition of the Commissioners of the District of Columbia (except that the moneys appropriated for interest and the sinking fund shall be drawn therefrom only on the requisition of the Treasurer of the United States), such requisition specifying the appropriation upon which the same is drawn; and in no case shall such appropriation be exceeded either in requisition or expenditure; and the accounts for all disbursements of the Commissioners of said District shall be made monthly to the General Accounting Office by the auditor of the District of Columbia, on vouchers certified by the Commissioners, as required by law. (July 1, 1882, 22 Stat. 144, ch. 263, § 3; Mar. 3, 1883, 22 Stat. 470, ch. 95, § 2; June 10, 1921, 42 Stat. 24, ch. 18, § 304.)

TRANSFER OF FUNCTIONS

All functions of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. The function of making monthly accounts for all disbursements of the Commissioners to the General Accounting Office was transferred from the auditor to the Accounting Officer by Reorganization Order No. 20 dated Nov. 10, 1952. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

"General Accounting Office" was substituted for "accounting officers of the Treasury" in view of act June 10, 1921, which transferred the functions of the Treasury Department with respect to accounting to the General Accounting Office. See 31 U.S.C. § 44.

§ 47–311. "Miscellaneous Trust Fund Deposits"—Advances—Audit—Separate accounts to be kept.

All moneys received by the collector of taxes of the District of Columbia in the nature of trust-fund deposits, the disposition of which is not provided for by law, and which had been on April 27, 1904, deposited by said collector with the Treasurer of the United States to the official credit of the disbursing officer of the District of Columbia, shall be deposited by the said collector in the Treasury of the United States to the credit of a permanent appropriation account, to be known and designated as "Miscellaneous trust-fund deposits, District of Columbia."

Necessary advances from said permanent appropriation account shall be made by the Secretary of the Treasury to the disbursing officer of the District of Columbia, upon requisition of the commissioners,

for such amounts as may be required from time to time for necessary disbursements. The said disbursing officer shall make disbursements from such advances only upon itemized vouchers duly audited and approved by the auditor of the District of Columbia, and the accounts of said disbursing officer for all such disbursements shall be rendered to and audited by the General Accounting Office.

It shall be the duty of the auditor of the District of Columbia to keep separate accounts with each depositor for all trust-fund deposits received and deposited in accordance with the provisions of this section, showing the amounts received and deposited and the payments made on each individual account. (Apr. 27, 1904, 33 Stat. 368, ch. 1628; June 10, 1921. 42 Stat. 24, ch. 18, § 304.)

TRANSFER OF FUNCTIONS

All functions of the Disbursing Office of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. The order is set out in the Appendix to Title 1, Administration.

"General Accounting Office" was substituted for "accounting officers of the Treasury" in view of act June 10, 1921, which transferred the functions of the Treasury Department with respect to certain accounting functions to the General Accounting Office. See 31 U.S.C. § 44.

§ 47–312. Collection of taxes by distraint—Acquisition of liens.

In addition to any other methods or devices or both provided by law or regulation for the collection of various taxes (except real property taxes) due the District, any tax imposed by any law applicable to District taxes, and penalties and interest thereon, when such tax has become due and payable, may be collected in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection; and liens for all such taxes, penalties, and interest may be acquired in the same manner that liens for personal property taxes are acquired. (May 18, 1954, 68 Stat. 119, ch. 218, title XVI, § 1601.)

EFFECTIVE DATE

Section 1603 of act May 18, 1954, provided that: "This title [adding this section and § 47–313] shall be applicable with respect to taxes assessed within three years prior to the date of the approval of this Act [May 18, 1954]."

§ 47–313. Jeopardy assessments of taxes by assessing authority of the District.

If the assessing authority of the District believes that the collection of any tax imposed by any law applicable to the District Government (except real property taxes) will be jeopardized by delay, the assessing authority shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all the interest and penalties the assessment of which is provided for by law). Such tax, penalties, and interest, shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Collector of Taxes for the District for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful. For the purposes of this section the word "assessing authority" means the Assessor, the Board of Personal Tax Appraisers or any member thereof, and any other official or officials of the District, or their duly authorized representatives, having the duty to assess District taxes. (May 18, 1954, 68 Stat. 120, ch. 218, title XVI, § 1602.)

EFFECTIVE DATE

Section applicable with respect to taxes assessed within three years prior to May 18, 1954, see section 1603 of act May 18, 1954, set out as a note under § 47–312.

§ 47–314. Abatement of taxes.

The Commissioners are authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, other than taxes on real property, if the Commissioners determine under uniform rules prescribed by them that the administration and collection costs involved would not warrant collection of the amount due. (Sept. 30, 1966, 80 Stat. 858, Pub. L. 89–610, title IX, § 901.)

DEFINITION; CONSTRUCTION; SEVERABILITY OF PROVISIONS; RULES AND REGULATIONS

For definition of "Commissioners" as used in act Sept. 30, 1966, Pub. L. 89–610, enacting this section, and for construction of such act, severability of provisions with respect thereto, and authority to make rules and regulations to carry out provisions thereof, see §§ 1002–1005 of such act, set out as a note under § 25–124.

Chapter 4.—DESIGNATION OF PROPERTY FOR ASSESSMENT AND TAXATION

Sec.

47–401. Squares, lots, blocks, parcels, to be numbered.
47–402. Designation to be official.
47–403. Daily transcript from records of recorder of deeds and register of wills.
47–404. Designation of land for assessment—Beyond city limits.
47–405. Designation of land to be numbered.
47–406. Designation of land—Plat books to be made under authority of Commissioners—Custody of surveyor.
47–407. Surveyor's office to make daily transcripts of records of deeds, wills, condemnations, and decrees.
47–408. Designation given to land sufficient for tax sales purposes.
47–409. Sale of property belonging to the United States—Report of sale.

§ 47–401. Squares, lots, blocks, parcels, to be numbered.

For the purposes of facilitating assessment and taxation of real estate in the District of Columbia, the following system of designating the several parcels of land therein is hereby prescribed, and every designation given in conformity with said system shall be a sufficient description of the parcel of land to which it relates, for all purposes of assessment and collection of taxes and assessments of every kind:

Each square in the city of Washington shall bear a number or other designation that will distinguish it from every other square in said city.

Each lot or parcel of ground in each such square shall bear a number or other designation that will distinguish it from every other lot or parcel of ground in such square.

Each block in each subdivision in said District outside of the limits of the city of Washington shall bear a number that will distinguish it from every other such block.

Each lot or parcel of land in each such block shall bear a number that will distinguish it from every other lot therein.

Each piece or parcel of unsubdivided land and each parcel of land deeded by metes and bounds in said District shall have a distinctive designation.

As nearly as practicable, in the judgment of the commissioners, the numbers in each of the aforesaid squares, blocks, or parcels of land requiring to be numbered shall be in a regularly increasing numerical sequence and order, beginning with the lowest number practicable; and, in case of the lots, shall commence at the same relative location in each of the squares, blocks, or parcels of land, and be continued in the same relative order.

It shall be the duty of the said commissioners to cause a record of the designations of the several aforesaid parcels of land to be made in accordance with the foregoing system, in the office of the surveyor of said District; and hereafter it shall be the duty of the surveyor, in giving numbers to blocks or lots of future subdivisions, to be governed by said system. (Mar. 3, 1899, 30 Stat. 1376, ch. 457, § 1.)

LAND OUTSIDE THE CITY OF WASHINGTON

Number system for blocks, subdivisions, and parcels of land within the District but lying outside the city of Washington, see §§ 47–404 to 47–408.

§ 47–402. Designation to be official.

The designation as prescribed in section 47–401 to each of said lots or parcels of land, which they shall respectively bear on the records of the assessor of said District at the time said lots or parcels become subject to sale for arrears of any tax or assessment, shall be the official designation of said lots or parcels of land for the enforcement of the collection of all such arrears of general taxes and assessments for the tax year in which the said designation shall be given, and until such designation be changed pursuant to law. (Mar. 3, 1899, 30 Stat. 1377, ch. 457, § 2.)

§ 47–403. Daily transcript from records of recorder of deeds and register of wills.

The Commissioners of the District of Columbia shall cause to be made a daily transcript, and entry on the records of said assessor, of the designations of lots or parcels of land in said District appearing in instruments of conveyance received for record in the office of the recorder of deeds, and the designations of lots or parcels of land in said District transferred by probated wills; and the person or persons whom the Commissioners of said District may designate for the purpose of making such transcript shall for this purpose at all times during office hours have full access to the records of the recorder of deeds and the register of wills of said District; and the assessor shall daily furnish the surveyor with a copy of such transcript. (Mar. 3, 1899, 30 Stat. 1377, ch. 457, § 3.)

CROSS REFERENCE

Transcript from surveyor's office, see § 47–407.

§ 47–404. Designation of land for assessment—Beyond city limits.

For the purpose of facilitating the assessment and taxation of real property in the territory within the limits of the District of Columbia lying outside of the city of Washington the following system of designating the several subdivisions, blocks, lots, and parcels of land is hereby prescribed, and each and every designation made or given in conformity with said system shall be deemed a sufficient description of the property to which it relates for all purposes of assessment and the collection of taxes and assessments of every kind. (Feb. 23, 1905, 33 Stat. 737, ch. 735, § 1.)

§ 47–405. Designation of land to be numbered.

The Commissioners of the District of Columbia are hereby authorized and directed to cause to be given numbers to all of said blocks or squares, lots or parcels of land as said blocks, squares, lots, or parcels of land have been formed by the highway-extension plan, of record on February 23, 1905, in the office of surveyor of the District of Columbia, and subdivisions existing on February 23, 1905, and to place the numbers so given upon the said highway-extension plan: *Provided,* That in all cases where two or more blocks or parts of contiguous existing subdivisions are surrounded as a group by existing streets or roads, or by proposed streets of the highway-extension plan, such group shall be numbered as a block or square upon the recorded plats of the highway-extension plan: *Provided further,* That where lots are numbered in duplicate in any block or square which includes parts of two or more existing subdivisions, new lot numbers shall be given said lots numbered in duplicate, and new lot numbers shall also be given to all parts of lots remaining after the extension of streets or alleys by dedication, condemnation, or purchase, whereby parts of lots have become public property: *Provided further,* That new lot numbers shall also be given to all parts of original and subdivided lots existing on February 23, 1905, on the records of the assessor and the surveyor of the District of Columbia. (Feb. 23, 1905, 33 Stat. 737, ch. 735, § 2.)

NOTES TO DECISIONS

Powers of commissioners

Commissioners could not open street running through corners of two squares and across proposed street. *Rudolph* v. *Warwick* (1926, 56 App. D.C. 128, 10 F. 2d 993).

The commissioners were authorized and directed to number all the blocks or squares, lots or parcels of land which had been formed by the highway extension plan as shown by the records of the surveyor of the District of Columbia. *Hazard* v. *Blessing* (1925, 2 F. 2d 916, 55 App. D. C. 114.)

Square boundaries

Streets projected by the highway commission are designated as "square boundaries." *Hazard* v. *Blessing* (1925, 2 F. 2d 916, 55 App. D. C. 114).

§ 47–406. Designation of land—Plat books to be made under authority of Commissioners—Custody of surveyor.

The Commissioners of the District of Columbia shall cause to be prepared a series of volumes of plats, on a scale of one hundred feet to the inch, embracing all the land in said District outside the city of Washington, these plats to show at all times the separate parcels of land created by subdivisions, sales, wills, condemnations, dedications, decrees of court, or otherwise, each with its distinctive number. Said books shall be kept in the office of the surveyor of said District, and shall be numbered according to the first and last page numbers of each volume, the pages being numbered continuously, and indefinitely rising in numbers as new books are opened to record changes in the outlines of parcels from any cause. (Feb. 23, 1905, 33 Stat. 738, ch. 735, § 3.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 27 dated Apr. 3, 1953, as amended Apr. 10, 1953, provided that the functions of the Surveyor described in this section would continue to be delegated to the Office of the Assessor, Finance Office, Department of General Administration. This order was issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

§ 47–407. Surveyor's office to make daily transcripts of records of deeds, wills, condemnations, and decrees.

For the purpose of keeping said books constantly current and up to date, the said commissioners shall cause an employee of the surveyor's office to make daily transcripts of all deeds of conveyance, wills, condemnations, decrees, and other instruments or proceedings by which boundaries are changed; for which purpose, such employee of the surveyor's office shall at all times during business hours have full and free access to all records of the recorder of deeds, register of wills, clerk of the United States District Court for the District of Columbia, marshal, and other officials; and the surveyor shall furnish to the assessor a copy of such transcript, from which a duplicate set of taxation and assessment plat books shall be maintained by the said assessor: *Provided,* That the current series of taxation and assessment plat books in the surveyor's office shall be the standard book of reference for all purposes of assessment and taxation by all departments of the government of the District of Columbia. (Feb. 23, 1905, 33 Stat. 738, ch. 735, § 4; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

TRANSFER OF FUNCTIONS

Reorganization Order No. 27 dated Apr. 3, 1953, as amended Apr. 10, 1953, provided that the functions of the Office of the Surveyor described in this section would continue to be delegated to the Office of the Assessor. This order was issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

§ 47–408. Designation given to land sufficient for tax sales purposes.

The designation given as hereinbefore prescribed in section 47–404 to each block or square, lot or parcel of land, respectively appearing on the records of the assessor of the District of Columbia at the time any assessment or tax is levied for which such property may become subject to sale, shall be a complete and official designation of said block or square, lot or parcel of land, for the purpose of the collection of taxes or assessments of any kind, and the designations so given shall be considered good and sufficient descriptions in any advertisements of such property for sale for delinquent taxes or assessments. (Feb. 23, 1905, 33 Stat. 738, ch. 735, § 5.)

§ 47–409. Sale of property belonging to the United States—Report of sale.

It shall be the duty of the Director of the National Park Service, within ninety days after the sale of any lots or squares belonging to the United States in the city of Washington, to report the fact to the proper officers of the District, giving the date of sale, the number of the lot and square, and the name of the purchaser; and such lots or squares shall be liable to taxation by the District from the day of sale. (R. S., D. C., § 143; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1.)

TRANSFER OF FUNCTIONS

The functions of the Office of Public Buildings and Public Parks of the National Capital were transferred to the Office of National Parks, Buildings, and Reservations, and the first mentioned agency abolished by the President's Reorganization Plan No. 1, Executive Order 6166, § 2. Act Mar. 2, 1934, provided that the Office of National Parks, Buildings and Reservations should be known as the National Park Service.

Chapter 5.—RATES, RECORDS, AND SURPLUS FUNDS

Sec.

47–501. Assessment of taxes on real and personal property—Rate of taxation—Collection.
47–501a. Minimum rate of taxation on real property.
47–502. Treasury Department to keep record of receipts and disbursements relative to District of Columbia.
47–503. Disposition of surplus funds—To be applied to succeeding year's expenditures.

§ 47–501. Assessment of taxes on real and personal property—Rate of taxation—Collection.

For the purpose of defraying such expenses of the District of Columbia as Congress may from time tc time appropriate for, there hereby is levied for each and every fiscal year, a tax at such rate on the real and personal property subject to taxation in the District as will, when added to the other taxes and revenues of the District, produce money enough to enable the District to pay promptly and in full all sums directed by Congress to be paid by the District, and for which appropriation has been duly made; and the Commissioners of the District of Columbia hereby are empowered and directed to ascertain, determine, and fix annually such rate of taxation as will, when applied as aforesaid, produce the money needed to defray the share of the expenses of the District during the year for which the rate is fixed; and the Commissioners of the District shall, in accordance with existing law, cause all such taxes and revenues to be promptly collected and, when collected, to be daily deposited in the Treasury to the credit of the District for the purposes herein set out. (June 29, 1922, 42 Stat. 669, ch. 249.)

CODIFICATION

Act June 29, 1922, also levied a tax "on such intangible personal property as is subject to taxation in the District of Columbia, at the rate of five-tenths of one per centum on the full market value thereof" and contained a further provision, "the rate fixed herein on intangible personal property not to be made less but which may be increased by the Commissioners in their discretion to any rate not in excess of the rate imposed upon real estate." These provisions have been omitted because the Revenue Act of July 26, 1939, 53 Stat. 1107, ch. 367, title IV, § 1, provided: "The tax on intangible personal property imposed by any law relating to the District shall not apply with

respect to any year subsequent to the fiscal year ending June 30, 1939."

CROSS REFERENCES

Minimum rate of taxation on real property, see § 47–501a.

Time for payment, delinquency, see § 47–1209.

NOTES TO DECISIONS

Exemption from taxation

Where private act declared that property of club was exempt from taxation but was silent as to liability for taxes accrued prior to its approval by the President on July 2, 1956, property of the club was exempt from taxation for the fiscal year 1957 which commenced on Sunday, July 1, 1956, where the Commissioners were empowered to approve the list of exemptions on or before July 1, which being a Sunday, the Commissioners could have acted to recognize exemption from taxation throughout the entire day of the approval by the President. *District of Columbia* v. *General Federation of Women's Clubs* (1957, 249 F. 2d 503, 101 U.S. App. D.C. 411).

Migratory property

This section and § 47–1201 et seq. authorizing taxation by District of Columbia of all tangible "personal property subject to taxation" contemplates personal property having a definite and permanent situs in the District and not temporarily brought into District by nonresident, and this section and said § 47–1201 et seq. apply only to property that has acquired a fixed, definite and permanent taxable situs. *Queen City Brewing Co.* v. *District of Columbia* (1943, 134 F. 2d 44, 77 U. S. App. D. C. 213, certiorari denied 63 S. Ct. 1330, 319 U. S. 767, 87 L. Ed. 1716).

Personal property tax on bankrupt

Personalty of a bankrupt, in the hands of trustee in bankruptcy on July 1, 1954, was subject to district's personal property tax for the fiscal year commencing on that date, notwithstanding the fact that such date of assessment was subsequent to the date of bankrupt's adjudication in bankruptcy, and that the trustee did not conduct any business. *Brown, Trustee in Bankruptcy, etc.* v. *Collector of Taxes for the District of Columbia* (1957, 247 F. 2d 786, 101 U.S. App. D.C. 200).

Priority

In proceeding for reorganization of corporate debtor under Bankruptcy Act, District of Columbia taxes are not entitled to special treatment not accorded to taxes owing to the United States. *In re Huyler's* (D.C.D.C. 1952, 107 F. Supp. 318, affirmed 204 F. 2d 502).

§ 47–501a. Minimum rate of taxation on real property.

For each fiscal year after May 18, 1954 the rate of taxation on real property in the District of Columbia shall not be less than 2.20 per centum on the assessed value of such property. (May 18, 1954, 68 Stat. 119, ch. 218, title XV, § 1501.)

§ 47–502. Treasury Department to keep record of receipts and disbursements relative to District of Columbia.

The treasury department shall accurately keep an account showing all receipts and disbursements relative to the revenues and expenditures of the District of Columbia, and shall also show the sources of the revenue, the purpose of expenditure, and the appropriation under which the expenditure is made; and any and all revenue derived from property not owned wholly or in part by the District of Columbia, as between the United States and the District of Columbia, shall be the property of the United States. (June 29, 1922, 42 Stat. 669, ch. 249; Aug. 17, 1937, ch. 690, title X, § 1, as added May 16, 1938, 52 Stat. 375, ch. 223, § 8.)

AMENDMENT

1938—Act May 16, 1938, repealed provisions of this section which read as follows: "and where the United States is the owner of ground or the holder thereof in trust for the public, upon which improvements have been made at the joint expense of the United States and the District of Columbia, the revenues therefrom shall be first be used to pay the United States 3 per centum of the full value of the ground as a ground rent, and the remainder shall be divided between them in the same proportion that each contributed to said improvements, and for such purposes the assessor for the District of Columbia shall fix the full value of the ground after he has first made oath that he will fairly and impartially appraise the same."

§ 47–503. Disposition of surplus funds—To be applied to succeeding year's expenditures.

If, for any fiscal year, the District of Columbia should raise and deposit in the treasury to its credit, more money derived from taxation, privileges, and other sources authorized in this chapter than may be necessary for the purposes therein, such excess shall be available the succeeding year, in the discretion of the Commissioners, either for the purpose of meeting the expense chargeable to the District of Columbia and/or for the further purpose of enabling the Commissioners to fix a lower rate of taxation for the year following the one in which said excess accrued than they might otherwise be able to do; and the agencies through which the District of Columbia collects its revenue derived from taxation shall also collect for the United States any revenues which by section 47–502 become the sole property of the United States, and said revenues shall be deposited in the Treasury of the United States as "miscellaneous receipts"; and the Commissioners of the District of Columbia shall not be restricted in submitting to the Bureau of the Budget their estimates of the needs of the District, but they shall, as near as may be bring them within the probable aggregate of the fixed proportionate appropriations to be paid by the United States and the District of Columbia. (June 29, 1922, 42 Stat. 669, ch. 249.)

CODIFICATION

Provisions which read "but the revenues from the property known as Center Market shall not be so collected," have been omitted since the market is no longer in existence. See act June 6, 1930, 46 Stat. 523, ch. 412.

Chapter 6.—TAX ASSESSOR

Sec.
47–601. Assessor of District of Columbia to prepare annual tax ledgers—Statement of assessment and taxes.
47–602. Assessor to furnish bond.
47–603. Records to be kept by assessor—Duties of assessor.
47–604. Board of assistant assessors—Appointment—Qualifications—Clerk.
47–605. Assistant assessors—Three members to assess real property and three members to assess personal property.
47–606. Assessor to have power to administer oaths and summon witnesses.

§ 47–601. Assessor of District of Columbia to prepare annual tax ledgers—Statement of assessment and taxes.

The assessor of the District of Columbia shall be charged with the duty of preparing the annual tax ledgers on a numerical system, which shall be finished or completed at such time as will allow preparation by him of tax bills for collection purposes. Upon the completion of the tax ledgers, said assessor shall prepare a statement showing the total amount

of the assessment of both real and personal property, and the total amount of taxes to be collected under said assessment; which statement shall be receipted by the collector of taxes in triplicate, and said collector shall be held responsible under his bond for all such taxes, except such as he may not be able to collect after fully complying with the requirements of law. The original receipt of said assessment and taxes shall be forwarded by the assessor to the General Accounting Office, the duplicate to the auditor of the District of Columbia, and the triplicate shall be retained by the collector. (Mar. 31, 1892, 27 Stat. 13, ch. 30; June 10, 1921, 42 Stat. 24, ch. 18, § 304; July 3, 1926, 44 Stat. 834, ch. 759, § 8.)

AMENDMENT

1926—Act July 3, 1926, added the first sentence.

TRANSFER OF FUNCTIONS

All functions of the Office of the Assessor and of the Office of the Auditor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. Reorganization Order No. 20 dated Nov. 10, 1952, abolished the Office of the Assessor and the Office of the Auditor and transferred their functions to the Finance Office. The same order provided that an Office of the Assessor would be created in the Finance Office. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

"General Accounting Office" was substituted for "First Comptroller of the Treasury" in view of act June 10, 1921, which transferred certain powers and duties conferred or imposed by law upon the Comptroller to the General Accounting Office. See U.S. Code, title 31, § 44.

CROSS REFERENCES

Competent witness in condemnation proceedings, see § 14–308.

Duty to make list of those eligible for military service, see § 39–103.

Ex-officio member and chairman of Real Estate Commission, see § 45–1403.

§ 47–602. Assessor to furnish bond.

The assessor of the District of Columbia shall give bond to the District of Columbia for the faithful and efficient performance of all the duties of his office in the penal sum of ten thousand dollars, with sureties to be approved by the commissioners of said District. (July 7, 1898, 30 Stat. 666, ch. 571.)

§ 47–603. Records to be kept by assessor—Duties of assessor.

All records and accounts in any way relating or pertaining to the bookkeeping, accounting, and collection of taxes and assessments which, prior to June 25, 1938, were prepared by the assessor of the District of Columbia and kept in the office of the collector of taxes of the District of Columbia shall be transferred to and kept in the office of the said assessor. The said assessor shall be charged with the duties heretofore required of the collector of taxes in relation to the preparation and issuance of tax bills and bills for special taxes and assessments, the preparation for public inspection of lists of all real estate in the District of Columbia heretofore sold or which may hereafter be sold for the nonpayment of any general or special taxes or assessments, the furnishing of certified statements over his hand and official seal of all taxes and assessments general and special that may be due at the time of making the said certificate, and the preparation of the lists of taxes on real property in said District subject to taxation on which taxes are levied and in arrears on the 1st day of July in each year. On or before September 1 of each year the assessor shall prepare and retain in his office tax accounts in such form as shall be prescribed by the Commissioners of the District showing the assessed owners, amount, description, and value of real property listed for taxation in the District of Columbia, and on or before April 1 of each year the assessor shall prepare and retain in his office personal tax accounts in such form as may be prescribed by the Commissioners of the District showing the names and addresses of assessed owners, and the location and value of the property assessed. (June 25, 1938, 52 Stat. 1202, ch. 702, § 11.)

CROSS REFERENCE

Preparation of list of property sold for taxes, see § 47–1010.

§ 47–604. Board of assistant assessors—Appointment—Qualifications—Clerk.

The Commissioners of the District of Columbia shall appoint as a permanent board of assistant assessors such persons as are conversant with real estate values in the District of Columbia and who have been bona fide residents of the District for a period of at least five years, except that two of such appointees may be persons who have been bona fide residents of the District of Columbia Metropolitan Area for a period of at least five years. Each person so appointed on said board shall, within ten days after receiving notice thereof, take and subscribe an oath to diligently, faithfully, and impartially perform all and singular the duties imposed upon him by law. If any such appointee shall fail to qualify as aforesaid within the time prescribed, or shall fail to enter upon the discharge of his duties within fifteen days after such qualification, the appointment shall be void, and the Commissioners shall forthwith appoint another suitable person, who shall qualify as above provided. And said Commissioners are hereby authorized and directed to appoint a clerk for said board of assistant assessors; and said clerk shall also be the clerk for the board of equalization and review hereinafter provided for. For the purposes of sections 47–209, 47–604, 47–606, 47–701, 47–702, 47–704 to 47–710, and 47–712, the term "District of Columbia Metropolitan Area" means the District of Columbia, the cities of Alexandria and Falls Church, and the counties of Arlington and Fairfax in Virginia, and the counties of Montgomery and Prince Georges in Maryland. (Aug. 14, 1894, 28 Stat. 282, ch. 287, § 2; July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1; Mar. 3, 1917, 39 Stat. 1005, ch. 160; July 3, 1926, 44 Stat. 832, ch. 759, § 1; Aug. 3, 1954, 68 Stat. 651, ch. 654, § 1.)

CODIFICATION

Provisions which required equalization returns to be made before the first Monday in January 1895 are omitted as obsolete.

Provisions which prescribed the salary of the members were omitted as covered by the Classification Act of 1949. That act (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended) was later repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by section 305,

chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S.C.

AMENDMENTS

1954—Act Aug. 3, 1954, authorized the appointment of two persons who have been bona fide residents of the District of Columbia Metropolitan Area for a period of at least five years, defined the term "District of Columbia Metropolitan Area", and eliminated provisions which limited the board to six persons.

1926—Act July 3, 1926, increased the membership of the board from fixe to six members.

1917—Act Mar. 3, 1917, eliminated provisions which prohibited removal of the assessor and the members of the permanent board of assistant assessors except for inefficiency, neglect of duty, or malfeasance.

TRANSFER OF FUNCTIONS

All functions of the Office of the Assessor and of the Board of Assistant Assessors including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. Reorganization Order No. 20 dated Nov. 10, 1952, abolished the Office of Assessor and the Board of Assistant Assessors and transferred their functions to the Finance Office in the Department of General Administration. The same order established in the Finance Office an Office of the Assessor headed by an Assessor, and established the Board of Assistant Assessors under the Assessor. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

Board of Assistant Assessors (real estate), Board of Personal Tax Appraisers, and Board of Equalization and Review abolished by Organization Order No. 121 of the Commissioners of the District of Columbia, dated Dec. 12, 1957. The order established a Board of Equalization and Review in the Finance Office, composed of the Finance Officer as Chairman, and two or more qualified officials of the Finance Office designated by the Finance Officer Under the provisions of the organization order, the Board of Equalization and Review was empowered to review and equalize real estate assessments, hear complaints against real estate assessments and take appropriate action, and to transmit equalized assessments to the Board of Commissioners for approval. The organization order is set out in the Appendix to Title 1, Administration.

§ 47–605. Assistant assessors—Three members to assess real property and three members to assess personal property.

The assessor of the District of Columbia shall designate three of the members of said Board of Assistant Assessors for the assessment of real estate, and the three other members of said board to assess personal property, in accordance with law; all members of said board, together with the assessor of the District of Columbia, as chairman, shall constitute the Board of Equalization and Review of real-estate assessments, and also the Board of Personal Tax Appeals: *Provided,* That the assessor of the District of Columbia shall act as chairman, ex officio, of the several boards aforesaid. (July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1; July 3, 1926, 44 Stat. 832, ch. 759, § 1.)

AMENDMENT

1926—Act July 3, 1926, provided that three members should serve on the board to assess personal property.

TRANSFER OF FUNCTIONS

Composition of Board of Equalization and Review and abolition of Board of Assistant Assessors (real estate), see transfer of functions note under § 47–604.

NOTES TO DECISIONS

Testimony of assessor

In appraising property for tax assessment, a district assessor may not testify as expert witness in condemnation proceedings. *Johnson* v. *Reichelderfer* (1931, 50 F. 2d 336, 60 App. D.C. 186).

§ 47–606. Assessor to have power to administer oaths and summon witnesses.

The assessor of the District of Columbia and each member of said Board of Assistant Assessors in the discharge of any of the duties devolved upon him or them, or the Board of Equalization and Review, may administer all necessary oaths or affirmations. The assessor of the District of Columbia, or in his absence the temporary chairman of said board, shall have power to summon the attendance of any person before said board to be examined under oath touching such matters and things as the Board of Assistant Assessors or the said Board of Equalization and Review may deem advisable in the discharge of their duties; and any member of the Metropolitan police force of the District of Columbia may serve subpœnas in his behalf. Such fees shall be allowed witnesses so examined, to be paid out of the contingent fund of the commissioners, as are allowed in civil actions before the United States District Court for the District of Columbia. Any person summoned and examined as aforesaid who shall knowingly make false oath or affirmation shall be guilty of perjury, and upon conviction thereof be punished according to the laws in force for the punishment of perjury. (Aug. 14, 1894, 28 Stat. 285, ch. 287, § 13; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

TRANSFER OF FUNCTIONS

Present status and functions of the Assessor, Board of Assistant Assessors, and Board of Equalization and Review, see transfer of functions note under § 47–604.

Chapter 7.—ASSESSMENT OF REAL PROPERTY

Sec.

47–701. Assessments to be made in the name of the owner.
47–702. Assessments to be made annually.
47–703. Assessments to be by lot and square.
47–704. Commissioners to supply Board of Assistant Assessors with plats.
47–705. Assistant Assessor's valuation to be made separately for improvements and each tract or lot.
47–706. Board of Assistant Assessors to make annual tabulated report of property assessed.
47–707. Penalties.
47–708. Board of Equalization and Review—Annual meeting—Notice of meetings—Duties.
47–709. Valuation of real property to be complete on the first Monday of May annually.
47–710. Real property and improvements becoming subject to taxation to be listed annually.
47–711. New buildings under roof to be included in list.
47–712 Assessment of omitted property—Voided assessments, reassessment of property.
47–713. Assessments to be according to true value of the property—Taxes on subdivisions made from July to December, inclusive.
47–714. Subdivisions made during January, February, March, April, May, or June—Taxation, special assessment.

Sec.
47–715. Redistribution of assessment on application by owner of unsubdivided tract.
47–716. Application for redistribution or reassessment—Notice—Validity.
47–717. Reassessment of real estate by Board of Assistant Assessors.
47–718. Philadelphia, Baltimore and Washington Railroad Company or Baltimore and Ohio Railroad Company property—Taxation.
47–719. Baltimore and Ohio Railroad Company—Terminals—Taxation.
47–720. Baltimore and Potomac, bridges and tunnels assessed for taxation.
47–721. Reassessment of taxes declared void by court.
47–722. Valuation of United States property in the District of Columbia.
47–723. Valuation of United States property in the District of Columbia under regulations of Secretary of the Interior.

§ 47–701. Assessments to be made in the name of the owner.

All real property in the District of Columbia, except as hereinafter provided, shall be assessed in the name of the owner, or trustee or trustees of the owner thereof. All undivided real property of a deceased person may be assessed in the name of such deceased person until the same is divided, according to law, or has otherwise passed into the possession of some other person or persons; and all real property, the ownership of which is unknown, shall be assessed "owner unknown." (Aug. 14, 1894, 28 Stat. 282, ch. 287, § 1.)

CROSS REFERENCES

Assessment of a tax against premises used for purposes of prostitution, see § 22–2720.

Assessment of land reverting from abandoned highways, see § 7–124.

Assessment of lands reverting to private owners from public highways closed under Street Readjustment Act, see § 7–401.

Board for assessment of real estate, see § 47–605.

NOTES TO DECISIONS

Deceased owners

Where wills of deceased nonresident owners of lots had not been probated in District of Columbia and it was not shown that commissioners were given notice of deaths of owners or who became owners under the wills, it was proper to assess lots in names of deceased owners. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation* (1943, 134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

Realty held by devisees as tenants in common was properly assessed under this section in the name of their testatrix even after probate of her will. *Deming* v. *Turner* (D.C.D.C. 1946, 63 F. Supp. 220).

Notice of assessment

Where will placing record title to lot in husband and wife as trustees was probated after husband had acquired tax title in individual name, assessment in name of husband only was sufficient to give due notice of the assessment, within requirements of "due process of law". *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation* (1943, 134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

Persons owning undivided interests in realty in District of Columbia as devisees or heirs of deceased former owner are not prejudiced by assessment of such realty in name of their decedent because this section permitting such assessment places them on notice that assessment will be thus carried on tax rolls. *Deming* v. *Turner* (D.C.D.C. 1946, 63 F. Supp. 220).

Passing of possession

The quoted phrase as used in this section authorizing undivided real property of a deceased person to be assessed in name of such deceased person until it is divided, according to law, or has "otherwise passed into the possession of some other person or persons", refers to a passing other than by intestacy or the will itself. *Turner* v. *Deming* (1946, 155 F. 2d 181, 81 U. S. App. D. C. 113, certiorari denied 67 S. Ct. 80, 329 U.S. 727, 91 L. Ed. 629).

Realty which passed into possession of testatrix's four children as tenants in common under the will did not thereby pass into possession of "some other person or persons", within this section, and hence assessment of the realty in testatrix's name was authorized. *Id.*

Property not to be assessed

Poles, conduits, wires, and lamps are not to be assessed under the real estate tax law. *Rudolph* v. *Potomac Elec. Power Co.* (1928, 24 F. 2d 882, 58 App. D. C. 54, 57 A. L. R. 865).

Purpose

This section permitting assessment of undivided real property of a deceased person in the name of decedent was intended to relieve taxing authorities of the burden of tracing heirs and devisees and their heirs and devisees, all of whom might own undivided interests in the same property. *Deming* v. *Turner* (D.C.D.C. 1946, 63 F. Supp. 220).

Record owner

Taxes must be assessed in the name ot the record owner of the property. *Tepper* v. *Fraser* (1934, 70 F. 2d 778, 63 App. D. C. 174).

Tax title holder

Where tax deed was made in accordance with § 47–1003, it was proper to assess taxes in name of tax title holder. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation* (1943, 134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

Where will placing record title to lot in husband and wife as trustees was probated after husband had acquired tax title in individual name, assessment in name of husband only was valid as being in name of "owner" within statutory requirement and the irregularity did not invalidate the assessment in view of "laches" in nonpayment of taxes from 1921 to 1929 and again from 1931 to 1934. *Id.*

Trustee

Where will placing record title to lot in trustee was probated after trustee had acquired tax title in individual name, even if assessment in name of record holder under will was required, assessment in name of the trustee individually was proper. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation* (1943, 134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

Undivided real property

Realty owned by devisees as tenants in common was "undivided real property" within this section permitting assessment of undivided real property of a deceased person in decedent's name. *Deming* v. *Turner* (D.C.D.C. 1945, 63 F. Supp. 220).

Realty which was devised to testatrix's four children as tenants in common did not become "divided" when it passed to the children under the will, so as to preclude assessment of the realty in name of testatrix under this section. *Turner* v. *Deming* (1946, 155 F. 2d 181, 81 U. S. App. D. C. 113, certiorari denied 67 S. Ct. 80, 329 U. S. 727, 91 L. Ed. 629).

Validity

Conveyance of title would not affect validity of assessment in grantor's name where conveyance was not recorded until after the assessment. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation* (1943, 134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

§ 47–702. Assessments to be made annually.

Assessments of real estate in the District of Columbia for purposes of taxation shall be made annually in the same manner and subject to the same limitations as heretofore provided by law for making

biennial assessments of real estate in said District. (Aug. 14, 1894, 28 Stat. 283, ch. 287, § 3; Sept. 1, 1916, 39 Stat. 678, ch. 433; July 3, 1926, 44 Stat. 834, ch. 759, § 10.)

AMENDMENTS

1926—Act July 3, 1926, authorized annual assessments.
1916—Act. Sept. 1, 1916, provided for biennial instead of triennial assessments.

§ 47–703. Assessments to be by lot and square.

Real estate in the city of Washington, except such as may be exempt by law from taxation, shall be assessed according to the number of the squares and lots thereof, or parts of lots, and upon the number of the square or superficial feet in each square or lot, or parts of a lot, and in the county the agricultural lands shall be assessed by the acre, and suburban lots by the square foot, as in the city of Washington. (Mar. 3, 1883, 22 Stat. 569, ch. 137, § 5; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

CODIFICATION

Act Feb. 11, 1895, incorporated Georgetown into the city of Washington and directed "that the squares in Georgetown" be "renumbered, so that no square shall hereafter bear a like number to any square in the city of Washington."

NOTES TO DECISIONS

Front-foot rule

Assessment under front-foot rule was invalid. *Johnson* v. *Rudolph* (1927, 16 F. 2d 525, 57 App. D. C. 29). See, also, *Dougherty* v. *American Secur. & Trust Co.* (1930, 40 F. 2d 813, 59 App. D. C. 301, certiorari denied 51 S. Ct. 31, 282 U. S. 854, 75 L. Ed 757); *Taliaferro* v. *Railway Terminal Warehouse Co.* (1930, 43 F. 2d 271, 59 App. D. C. 376).

In applying this general law as to front-foot rule, which extends throughout the District, to a special assessment for street improvement not exclusively benefiting adjacent property-owners, the assessment cannot be upheld if it is in excess of the benefits and is not equal and fair in view of existing physical conditions, as where there is no relative equality in the value and depth of the abutting properties. *John* v. *Rudolph* (1927, 16 F. 2d 525, 57 App. D. C. 29).

In applying the front-foot rule under this act, the size, shape, improvements, or favorable location of property is not the test in determining validity of an assessment, but rather the relation of the property to other properties facing on the avenue and in the immediate vicinity. *Taliaferro* v. *Railway Terminal Warehouse Co.* (1930, 43 F. 2d 271, 59 App. D. C. 376).

A road improvement assessment under the front-foot rule was canceled as inequitable as applied to a triangular-shaped lot. *Id.*

§ 47–704. Commissioners to supply Board of Assistant Assessors with plats.

The commissioners shall furnish each member of said Board of Assistant Assessors with the necessary maps and field books, which shall contain an accurate list of each tract, together with a pertinent description of the real property situate in the District of Columbia, and, as far as may be known, the owner thereof; and also such blanks, forms, books, surveys, and plats as may be necessary for a systematic statement of the property to be assessed, and shall also furnish the said Board of Assistant Assessors with the necessary conveyance to view said property for assessment. Upon the completion of the assessment the said Board of Assistant Assessors shall deposit with the assessor of the District of Columbia all maps, field books, surveys, and plats, and all notes and memoranda thereof, and same shall be open to inspection by any taxpayer of said District. (Aug. 14, 1894, 28 Stat. 283, ch. 287, § 4.)

TRANSFER OF FUNCTIONS

Transfer of functions of Board of Assistant Assessors, see note under § 47–604.

§ 47–705. Assistant Assessor's valuation to be made separately for improvements and each tract or lot.

Said Board of Assistant Assessors shall, from actual view and from the best sources of information in its reach, determine the value of each separate tract or lot of real property in the District of Columbia in lawful money, and shall separately estimate the value of all improvements on any tract or lot, and shall note the same in the proper field book, which shall be carried out as part of the value of such tract or lot, and shall also return the dimensions of each tract or lot, and said assistant assessors shall also perform such other official duties as may be required of them by the Commissioners of the District of Columbia. (Aug. 14, 1894, 28 Stat. 283, ch. 287, § 6.)

TRANSFER OF FUNCTIONS

Transfer of functions of Board of Assistant Assessors, see note under § 47–604.

§ 47–706. Board of Assistant Assessors to make annual tabulated report of property assessed.

Said Board of Assistant Assessors shall annually on or before the 1st Monday of January make out and deliver to the assessor of the District of Columbia a return in tabular form, contained in a book to be furnished by the commissioners, of the amount, description, and value of the real property subject to be listed for taxation in the District of Columbia. (Aug. 14, 1894, 28 Stat. 283, ch. 287, § 7; Sept. 1, 1916, 39 Stat. 678, ch. 433; July 3, 1926, 44 Stat. 834, ch. 759, § 10.)

AMENDMENTS

1926—Act July 3, 1926, authorized annual assessments.
1916—Act Sept. 1, 1916, required biennial assessments instead of triennial assessments.

TRANSFER OF FUNCTIONS

Transfer of functions of Board of Assistant Assessors, see note under § 47–604.

§ 47–707. Penalties.

Any person who shall refuse or knowingly neglect to perform any duty enjoined on him by law, or who shall consent to or connive at any evasion of the provision of sections 47–209, 47–604, 47–606, 47–701, 47–702, 47–704 to 47–710, and 47–712, shall, on conviction thereof, be liable to removal from office and to a fine not exceeding five hundred dollars, or imprisonment not exceeding one year, or both, in the discretion of the court, for each offense. (Aug 14, 1894, 28 Stat. 283, ch. 287, § 8.)

§ 47–708. Board of Equalization and Review—Annual meeting—Notice of meetings—Duties.

The Assessor and Deputy Assessor of the District and the board of all of the assistant assessors, with the Assessor as chairman, shall compose a Board of Equalization and Review, and as such Board of Equalization and Review they shall convene in a room to be provided for them by the Commissioners, on the first Monday of January of each year, and shall remain in session until the first Monday

in April of each year, after which date no complaint as to valuation as herein provided shall be received or considered by such Board of Equalization and Review. Public notice of the time and place of such session shall be given by publication for two successive days in two daily newspapers in the District not more than two weeks or less than ten days before the beginning of said session. It shall be the duty of said Board of Equalization and Review to fairly and impartially equalize the value of real property made by the board of assistant assessors as the basis for assessment. Any five of said Board of Equalization and Review shall constitute a quorum for business, and, in the absence of the Assessor, a temporary chairman may be selected. They shall immediately proceed to equalize the valuations made by the board of assistant assessors so that each lot and tract and improvements thereon shall be entered upon the tax list at their value in money; and for this purpose they shall hear such complaints as may be made in respect of said assessments, and in determining them they may raise the valuation of such tracts or lots and improvements as in their opinion may have been returned below their value and reduce the valuation of such as they may believe to have been returned above their value to such sum as in their opinion may be the value thereof. (Aug. 17, 1937, ch. 690, title IX, § 5(a), as added May 16, 1938, 52 Stat. 372, ch. 223, § 8, and amended July 26, 1939, 53 Stat. 1109, ch. 367, title IV § 5(b); July 10, 1952, 66 Stat. 544, ch. 649, § 3(c).)

CODIFICATION

Section comprises the first five sentences of subsection (a) of section 5 of title IX of act Aug. 17, 1937. Remainder of such subsection (a) is classified to §§ 47–709 and 47–2405.

AMENDMENTS

1952—Act July 10, 1952, authorized the board to raise the value of improvements on tracts or lots.

1939—Act July 26, 1939, included the Deputy Assessor within the Board of Equalization and Review.

TRANSFER OF FUNCTIONS

Composition of Board of Equalization and Review and abolition of Board of Assistant Assessors (real estate), see transfer of functions note under § 47–604.

PRIOR PROVISIONS

Provisions which related to composition and meetings of the Board of Equalization and Review were formerly contained in act Aug. 14, 1894, 28 Stat. 284, ch. 287, § 9.

§ 47–709. Valuation of real property to be complete on the first Monday of May annually.

The valuation of the real property made and equalized as aforesaid shall be completed not later than the first Monday of May annually. The valuation of said real property made and equalized as aforesaid shall be approved by the Commissioners not later than July 1, annually, and when approved by the Commissioners shall constitute the basis of taxation for the next succeeding year and until another valuation is made according to law, except as hereinafter provided. Any person aggrieved by any assessment, equalization, or valuation made may within ninety days after October 1 of the year in which such assessment, equalization, or valuation is made, appeal from such assessment, equalization, or valuation in the same manner and to the same extent as provided in sections 47–2403 and 47–2404: *Provided, however,* That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided, except that, in case of increase of valuation of real property over that for the immediately preceding year, where no notice in writing of such increase of valuation is given the taxpayer prior to March 1 of the particular year, no such complaint shall be required for appeal. (Aug. 17, 1937, ch. 690, title IX, § 5(a), as added May 16, 1938, 52 Stat. 372, § 223, § 8, and amended July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5(b); July 10, 1952, 66 Stat. 544, ch. 649, § 3(c).)

CODIFICATION

Section comprises the last two sentences of subsection (a) of section 5 of title IX of act Aug. 17, 1937. Remainder of such subsection (a) is classified to § 47–708. Provisions contained in this section are also classified to § 47–2405.

AMENDMENTS

1952—Act July 10, 1952, added the exception to the proviso.

1939—Act July 26, 1939, substituted "October 1" for "August 1" and added the proviso.

TRANSFER OF FUNCTIONS

Composition and functions of Board of Equalization and Review, see note under § 47–604.

PRIOR PROVISIONS

Provisions which related to the valuation of real property were formerly contained in act Aug. 14, 1894, 28 Stat. 284, ch. 287, § 10.

NOTES TO DECISIONS

Exemption

Where private act declared that property of club was exempt from taxation but was silent as to liability for taxes accrued prior to its approval by the President on July 2, 1956, property of the club was exempt from taxation for the fiscal year 1957 which commenced on Sunday, July 1, 1956, where the Commissioners were empowered to approve the list of exemptions on or before July 1, which being a Sunday, the Commissioners could have acted to recognize exemption from taxation throughout the entire day of the approval by the President. *District of Columbia* v. *General Federation of Women's Clubs* (1957, 249 F. 2d 503, 101 U.S. App. D.C. 411).

Commissioners of District of Columbia had no power to exempt real estate of institutional owner where application for exemption came after property had been assessed for year, and an appeal within ninety days after the tax statement was mailed was its only remedy. *Congregational Home of District of Columbia* v. *District of Columbia* (1953, 202 F. 2d 808, 92 U.S. App. D.C. 73).

Next succeeding year

Where this chapter provided for annual assessment of real estate and that annual valuation of real estate should constitute basis of taxation "for the next succeeding year", the quoted phrase had reference to taxes which are levied for a designated fiscal period and did not include inheritance tax which is never part of an annual tax levy on the mass of property in a taxing district. *Fisher* v. *District of Columbia* (1948, 164 F. 2d 707, 82 U. S. App. D. C. 371).

§ 47–710. Real property and improvements becoming subject to taxation to be listed annually.

Annually, on or prior to July 1 of each year, the Board of Assistant Assessors, shall make a list of all real estate which shall have become subject to taxation and which is not then on the tax list, and affix a value thereon, according to the rules prescribed by law for assessing real estate; shall make return of all new structures erected or roofed, and additions to or improvements of old structures which

shall not have theretofore been assessed, specifying the tract or lot of land on which each of such structures has been erected, and the value of such structure, and they shall add such valuation to the assessment made on such tract or lot. When the improvements on any lot or tract of land shall become damaged or be destroyed from any cause, the said board of assistant assessors shall reduce the assessment on said property to the extent of such damage: *Provided,* That the Board of Equalization and Review shall hear such complaints as may be made in respect of said assessments between September 1 and September 30 and determine the same not later than October 15 of the same year.

Any person aggrieved by any assessment or valuation made in pursuance of this section may, within ninety days after October 15 of the year in which said valuation or assessment is made, appeal from such assessment or valuation in the same manner and to the same extent as provided in sections 47–2403 and 47–2404: *Provided, however,* That if the taxpayer shall be notified in writing not later than September 1 of a particular year of the valuation of the real estate valued in accordance with this section, such taxpayer shall first make a complaint to the Board of Equalization and Review respecting such assessment as herein provided. (Aug. 17, 1937, ch. 690, title IX, § 5(b), as added May 16, 1938, 52 Stat. 372, ch. 223, § 8, and amended July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5(b); July 10, 1952, 66 Stat. 545, ch. 649, § 3(c).)

CODIFICATION

The last sentence of this section is also classified to § 47–2405.

AMENDMENTS

1952—Act July 10, 1952, substituted "if the taxpayer shall be notified in writing not later than September 1 of a particular year of the valuation of the real estate valued in accordance with this section, such taxpayer shall first make a complaint" for "such person shall have first made his complaint."

1939—Act July 26, 1939, substituted "September 1 and September 30" for "July 1 and July 15", and "October 15" for "August 1" in two instances.

TRANSFER OF FUNCTIONS

Composition and functions of Board of Equalization and Review, see transfer of functions note under § 47–604.

PRIOR PROVISIONS

Provisions which required listing of real property and improvements becoming subject to taxation were formerly contained in act Aug. 14, 1894, 28 Stat. 284, ch. 287, § 11.

§ 47–711. New buildings under roof to be included in list.

In addition to the annual assessment of all real estate made on or prior to July 1 of each year there shall be added a list of all new buildings erected or under roof prior to January 1 of each year, in the same manner as provided by law for all annual additions; and the amounts thereof shall be added as assessment for the second half of the then current year payable in the month of March. When the improvements on any lot or tract of land shall become damaged or be destroyed from any cause prior to January 1 of each year the said board of assistant assessors shall reduce the assessment on said property to the extent of said damage for the second half of the then current year payable in the month of March. The Board of Equalization and Review shall hear such complaints as may be made in respect of said assessments for the second half of said year between March 1 and March 31 and determine said complaints not later than April 15 of the same year. Any person aggrieved by any assessment made in pursuance of this section may, within ninety days after April 15 of the year in which such assessment is made, appeal from such assessment in the same manner and to the same extent as provided in sections 47–2403 and 47–2404: *Provided, however,* That if the taxpayer shall be notified in writing not later than March 1 of a particular year of the valuation of the real estate valued in accordance with this section, such taxpayer shall first make a complaint to the Board of Equalization and Review respecting such assessment as herein provided. (Aug. 17, 1937, ch. 690, title IX, § 5(c), as added May 16, 1938, 52 Stat. 372, ch. 223, § 8, and amended July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5(b); July 10, 1952, 66 Stat. 545, ch. 649, § 3(c).)

CODIFICATION

The last sentence of this section is also classified to § 47–2405.

AMENDMENTS

1952—Act July 10, 1952, substituted "if the taxpayer shall be notified in writing not later than March 1 of a particular year of the valuation of the real estate valued in accordance with this section, such taxpayer shall first make a complaint" for "such person shall have first made his complaint."

1939—Act July 26, 1939, substituted "March 1 and March 31" for "January 1 and January 15" and "April 15" for "February 1" in two instances.

TRANSFER OF FUNCTIONS

Composition of Board of Equalization and Review and abolition of Board of Assistant Assessors, see transfer of functions note under § 47–604.

§ 47–712. Assessment of omitted property—Voided assessments, reassessment of property.

If the board of assistant assessors shall learn that any property liable to taxation has been omitted from the assessment for any previous year or years, or has been so assessed that the assessment was void, it shall be their duty at once to reassess this property for each and every year for which it has escaped assessment and taxation, and report the same, through the assessor, to the collector of taxes who shall at once proceed to collect the taxes so in arrears as other taxes are collected: *Provided,* That no property which has escaped assessment and taxation shall be liable under this section for a period of more than three years prior to such assessment, except in the case of property involved in litigation. In addition to the duties of the assessor hereinbefore provided, it shall be the duty of the assessor upon reassessment as herein provided to notify the taxpayer by writing of the fact of such reassessment. Any person aggrieved by any reassessment made in pursuance of this section may, within ninety days after notice of said reassessment, appeal from said reassessment in the same manner and to the same extent as provided in sections 47–2403 and 47–2404. (Aug. 17, 1937, ch. 690, title IX, § 5(d), as added May 16, 1938, 52 Stat. 372, ch. 223, § 8.)

TRANSFER OF FUNCTIONS

Transfer of functions of the assessor and the board of assistant assessors, see note under § 47–604.

PRIOR PROVISIONS

Provisions which related to the assessment of omitted property were formerly contained in act Aug. 14, 1894, 28 Stat. 284, ch. 287, § 12.

NOTES TO DECISIONS

Retroactive assessment

The Commissioners of the District of Columbia have no function with respect to statutory procedure prescribed for retroactive assessment of omitted property, and the only officials who have a duty in that process are members of Board of Assistant Assessors, who make the retroactive assessment, and Assessor, who notifies taxpayer of assessment by sending him a tax bill. *Trustees of St. Paul Methodist Episcopal Church South* v. *District of Columbia* (1954, 212 F. 2d 244, 94 U.S. App. D.C. 78).

Assessment of omitted property by Board of Assistant Assessors is not required to be submitted to or to be approved by Board of Equalization and Review or Commissioners of District, and is not subject to administrative review except in the Tax Court. *Id.*

In the absence of statutory provision for reassessment for prior years, none can validly be made. *Tumulty* v. *District of Columbia* (1939, 102 F. 2d 254, 69 App. D. C. 390).

Three-year period

No property which has escaped taxation shall be liable for a period of more than three years prior to such assessment. *Tumulty* v. *District of Columbia* (1939, 102 F. 2d 254, 69 App. D. C. 390).

§ 47–713. Assessments to be according to true value of the property—Taxes on subdivisions made from July to December, inclusive.

All real estate in the District of Columbia subject to taxation, including improvements thereon, shall be listed and assessed at not less than the full and true value thereof in lawful money.

Whenever a subdivision of any lot or parcel of land in the District of Columbia, or any portion of any such lot or parcel is made during the months of July, August, September, October, November, or December, the general tax due and payable upon such lot or parcel of land for prior years and for the first half of the then current fiscal year shall then be paid, and all water main and sewer assessments and special assessments of any kind thereon shall then become due and payable, and be paid before such subdivision shall be admitted to record in the office of the surveyor of the District of Columbia; and the general tax thereon for the last half of the then current fiscal year shall be due and payable in the following May. (July 1, 1902, 32 Stat. 616, ch. 1352, § 5; Mar. 1, 1921, 41 Stat. 1195, ch. 95, § 1; June 29, 1922, 42 Stat. 669, ch. 249; July 3, 1926, 44 Stat. 833, ch. 759, § 4.)

CODIFICATION

Section 5 of act July 1, 1902, required assessment at not less than two-thirds of the true market value. Acts June 29, 1922, and July 3, 1926 require assessment at not less than the full market value.

AMENDMENT

1921—Act. Mar. 1, 1921, added the second paragraph.

NOTES TO DECISIONS

Duty of taxpayer

Local statute imposes on the taxpayer the duty truthfully to fill out the proper blanks in the schedule furnished by the assessor. *Hunt* v. *District of Columbia* (1940, 108 F. 2d 10, 71 App. D. C. 143).

§ 47–714. Subdivisions made during January, February, March, April, May, or June—Taxation, special assessment.

Whenever such subdivision is made during the months of January, February, March, April, May, or June, the total general tax assessed against the original lot or parcel of land for prior years and for the then current fiscal year, and all water main and sewer assessments and special assessments of any kind thereon, shall become due and payable and be paid before such subdivision is admitted to record in the office of the surveyor of the District of Columbia. (Mar. 1, 1921, 41 Stat. 1196, ch. 95, § 2.)

§ 47–715. Redistribution of assessment on application by owner of unsubdivided tract.

Whenever application is made in writing to the assessor of the District of Columbia by the owner of any tract of land in said District not subdivided into lots and of record as a subdivision in the office of the surveyor of said District, for the redistribution of any general or special taxes or assessments then levied or due thereon, or whenever such application is made by the owner of any parcel of such tract for such redistribution, any such general or special taxes or assessments levied or due against the entire tract of which such parcel is a part shall be redistributed so that the owner of any such parcel may pay the proportion of such entire taxes or assessments equitably chargeable thereon. (Mar. 1, 1921, 41 Stat. 1196, ch. 95, § 3.)

§ 47–716. Application for redistribution or reassessment—Notice—Validity.

Whenever application is made according to law for the reassessment or redistribution of taxes by reason of the subdivision of any tract of land in the District, the board of assistant assessors charged with the assessment of real estate in the District is hereby authorized and directed to reassess and redistribute any general or special assessment or tax levied or due and unpaid in accordance with provisions of laws for the assessment and equalizations of valuations of real estate in the District for taxation. The assessor shall promptly notify the owners of record of the land, the taxes of which shall be reassessed or redistributed. Notices in such case shall be served upon each lot or parcel owner if he or she be a resident of the District and his or her residence known, and if he or she be a nonresident of the District, or his or her residence unknown, such notice shall be served on his or her tenant or agent, as the case may be, and if there be no tenant or agent known to the Commissioners, then they shall give notice of such assessment by advertisement twice a week for two weeks in some newspaper published in said District. The service of such notice, where the owner or his tenant or agent resides in the District, shall be either personal or by leaving the same with some person of suitable age at the residence or place of business of such owner, agent, or tenant; and return of such service, stating the manner thereof, shall be made in writing and filed in the office of said Commissioners. Any person aggrieved by such reassessment or redistribution, may within ninety days after notice of such reassessment or redistribution, appeal from such reassessment or

redistribution in the same manner and to the same extent as provided in sections 47–2403 and 47–2404.

Any reassessment or redistribution made under sections 47–713 to 47–717 shall be as valid and effectual upon the various parts of the property, in the same manner and to the same extent as if the tax or assessment so reassessed or redistributed had been laid originally thereon under the various laws appertaining thereto. No payment or failure to pay a tax or assessment upon any such part shall change or affect the liability of the other parts of such property for any tax or assessment so reassessed or redistributed. (Mar. 1, 1921, 41 Stat. 1196, ch. 95, § 4; Aug. 17, 1937, ch. 690, title IX, § 5(e), as added May 16, 1938, 52 Stat. 374, ch. 223, § 8.)

CODIFICATION

Section consolidates section 5(e) of title IX of act Aug. 17, 1937, with section 4 of act Mar. 1, 1921. The first paragraph is from act Aug. 17, 1937, and the second paragraph is from act Mar. 1, 1921.

TRANSFER OF FUNCTIONS

Board of Assistant Assessors (real estate) abolished and functions transferred to Board of Equalization and Review, see notes under § 47–604.

§ 47–717. Reassessment of real estate by Board of Assistant Assessors.

The Board of Assistant Assessors charged with the assessment of real estate in the District of Columbia is hereby authorized and directed to reassess or redistribute any such general or special assessment or tax levied or due and unpaid in accordance with the provisions of laws for the assessment and equalizations of the valuations of real estate in the District of Columbia for taxation, after notice to owners of record of the land to be assessed, with right of appeal within ten days to the Board of Equalization and Review, as prescribed in section 47–708 and the assessor of said District is hereby authorized and directed to promptly reassess or redistribute any general or special assessment of any kind levied or due and unpaid, as hereinbefore provided. (Mar. 1, 1921, 41 Stat. 1196, ch. 95, § 5.)

REFERENCES IN TEXT

Section 47–708, referred to in the text, was, in the original, a reference to section 9 of act Aug. 14, 1894, 28 Stat. 284, ch. 287, which was formerly classified to § 47–708. The present provisions of § 47–708 are from the District of Columbia Revenue Act, 1937, and are similar to those formerly contained in section 9 of act Aug. 14, 1894.

TRANSFER OF FUNCTIONS

Composition and functions of Board of Equalization and Review and abolition of Board of Assistant Assessors (real estate), see notes under § 47–604.

§ 47–718. Philadelphia, Baltimore and Washington Railroad Company or Baltimore and Ohio Railroad Company property—Taxation.

The property owned or occupied by the Washington Terminal Company, or by the Philadelphia, Baltimore and Washington Railroad Company, or by the Baltimore and Ohio Railroad Company under authority of this Act, or otherwise, together with the improvements that may be put thereon, shall be subject to taxation in the District of Columbia in the same manner and to the same extent as other property in the District, and all tracks and sidings shall be taxed as real estate: *Provided,* That no assessment, valuation, or tax shall be made, laid, or levied on the stations, terminals, and lines of railroad located, constructed, or maintained under the authority of this Act, in excess of that which would or could be lawfully made, laid, or levied if said stations, terminals, and lines of railroad were located, constructed, and maintained without the use of bridges, tunnels, viaducts, retaining walls, or other structures necessary or properly employed to elevate or to depress the same as required by this Act; it being the true intent and meaning hereof that the lines of railroad and terminals hereby authorized shall be assessed and valued for the purpose of taxation and taxed on the same basis as if the same were not constructed and maintained by means of such bridges, tunnels, viaducts, retaining walls, and other structures: *Provided,* That such portions of the terminal structure or viaduct as may be constructed and used for storage or like commercial purpose shall be subject to taxation in the same manner as other property in the District of Columbia. (Feb. 28, 1903, 32 Stat. 914, ch. 856, § 6.)

REFERENCES IN TEXT

"This Act", referred to in the text, means act Feb. 28, 1903, 32 Stat. 909, ch. 856, which is classified in part to the section and sections 7–1213, 7–1214.

§ 47–719. Baltimore and Ohio Railroad Company—Terminals—Taxation.

The property occupied by the Baltimore and Ohio Railroad Company, or by the Washington Terminal Company, under authority of this Act, together with the improvements which may be put thereon, shall be subject to tax by the District of Columbia the same as other property in the District of Columbia: *Provided,* That no assessment, valuation, or tax shall be made or levied on the railroad or terminals located, constructed, or maintained under the authority of this Act, in excess of that which would or could be lawfully made, laid, or levied if said railroad and terminals were so located, constructed, and maintained without the use of bridges, viaducts, retaining walls, and other structures necessary or properly employed to elevate the same as required by this Act, it being the true intent and meaning hereof that the railroad and terminals hereby authorized shall be assessed and valued for purposes of taxation and taxed on the same basis as if the same were not constructed and maintained by means of such bridges, viaducts, retaining walls, and other structures. (Feb. 12, 1901, 31 Stat. 779, ch. 354, § 9.)

REFERENCES IN TEXT

"This Act", referred to in the text, means act Feb. 12, 1901, 31 Stat. 774, ch. 354, which is classified in part to this section and section 7–1212.

§ 47–720. Baltimore and Potomac, bridges and tunnels assessed for taxation.

The property occupied by the Baltimore and Potomac Railroad Company under authority of this section, together with the improvements which may be put thereon, shall be subject to tax by the District of Columbia the same as other property in the District of Columbia: *Provided,* That no assessment, valuation, or tax shall be made, laid, or levied on the Baltimore and Potomac Railroad Company on account of any bridges, tunnels, elevated tracks, or

subway which shall be located, constructed, or maintained under the authority of this Act, and forming part of said railroad, in excess of that which would or could be lawfully made, laid, or levied if said railroad was wholly located and constructed on the surface of the ground; it being the true intent and meaning hereof that any such bridges, tunnels, elevated tracks, or subway forming a part of said railroad shall be assessed and valued for purposes of taxation and taxed on the same basis as any other equal portion of railroad situated within the said District of Columbia not constructed on, in, through, or upon any such bridges, tunnels, elevated tracks, or subway. (Feb. 12, 1901, 31 Stat. 773, ch. 353, § 14.)

REFERENCES IN TEXT

"This Act", referred to in the text, means act Feb. 12, 1901, 31 Stat. 773, ch. 353, which is classified in part to this section and sections 7–507, 7–508 and 7–1211.

§ 47–721. Reassessment of taxes declared void by court.

The Commissioners of the District of Columbia are hereby authorized and directed, in all cases where general taxes or assessments for local improvements in the District of Columbia may be quashed, set aside, or declared void by the United States District Court for the District of Columbia, by reason of an imperfect or erroneous description of the lot or parcel of ground against which the same shall have been levied by reason of such tax or assessment not having been authenticated by the proper officer, or of a defective return of service of notice, or for any technical reason other than the right of the public authorities to levy the tax or make the improvement in respect of which the assessment was levied, to reassess the lot or parcel of ground in respect of such general taxes or the improvement mentioned in such defective assessment, with power to collect the same according to existing laws relating to the collection of assessments and taxes: *Provided*, That in cases where such taxes or assessments shall be quashed or declared void by said court, for the reasons hereinbefore stated, the reassessment herein provided for shall be made within ninety days after the judgment or decree of said court quashing or setting aside such taxes or assessments and any amount theretofore paid upon an assessment which has been declared void shall be credited the owner upon the reassessment made under the provision of this section. (Apr. 24, 1896, 29 Stat. 98, ch. 123; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of said District."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 47–722. Valuation of United States property in the District of Columbia.

There shall be a valuation taken of all real estate belonging to the United States in the District, except the public buildings, and the grounds which have been dedicated to the public use as parks and squares, at least once in five years, and return thereof shall be made by the commissioners to the President of the Senate and Speaker of the House of Representatives on the first day of the session of Congress held after such valuation shall be taken. (R. S., D. C., § 138; June 20, 1874, 18 Stat. 116, ch. 337, § 2.)

CODIFICATION

Act June 20, 1874, created and vested power in the Commissioners.

§ 47–723. Valuation of United States property in the District of Columbia under regulations of Secretary of the Interior.

All valuations of property belonging to the United States shall be made by such persons as the Secretary of the Interior shall appoint, and under such regulations as he shall prescribe. (R. S., D. C., § 139.)

Chapter 8.—EXEMPTIONS FROM TAXATION

Sec.

47–801. Repealed.
47–801a. Government property—Property of educational, charitable, religious or scientific institutions—Profits arising from sale of property.
47–801a–1. Disabled American Veterans property.
47–801a–2. National Society of the Colonial Dames of America.
47–801b. Income producing property of exempt institutions.
47–801b–1. Use of property by agencies of the United States or American Red Cross—Abatement of unpaid taxes.
47–801c. Report as to use of exempt property.
47–801d. Abatement or refund of tax assessed against exempt property.
47–801e. Appeal.
47–801f. Rules and regulations.
47–802. Repealed.
47–803. Property of United States, District of Columbia, and foreign legations exempt from assessments for improvements.
47–804. Repealed.
47–805. Louise Home.
47–806. Sheridan tapestries.
47–807. Chesapeake and Ohio Canal.
47–808. Oak Hill Cemetery—Property inalienable and exempt from taxation.
47–809. Corcoran Gallery of Art—Real property and works of art.
47–810. Corcoran Gallery of Art—Endowment fund.
47–811. Howard University.
47–812. Luther Statue Association.
47–813. Saint Mark's Protestant Episcopal Church.
47–814. Young Woman's Christian Home.
47–815. Young Women's Christian Association.
47–816. Young Women's Christian Association—Remission of accrued taxes.
47–817. Young Men's Christian Association.
47–818. Frederick Douglass Memorial and Historical Association.
47–819. Edes Home.
47–820. General Education Board.
47–821. Daughters of American Revolution—Lots 8, 9, and 10, square 173.
47–822. Daughters of the American Revolution—Square 173.
47–823. Daughters of the American Revolution—Lots 12, 13, 14, 15, and 16.
47–824. Daughters of the American Revolution—Lots 23, 24, 25, 26, 27, and 28.
47–825. Daughters of the American Revolution—Lots 4, 5, 6, 7, and 11.
47–826. National Society United States Daughters of 1812—Lot 811.
47–827. National Society of the Sons of the American Revolution.
47–828. The American Legion—Lots 32 and 33.

Sec.
47–829. National Education Association.
47–830. Society of the Cincinnati—Lots 42, 43, 49, and part of lot 5.
47–831. American Veterans of World War II—Lot 805.
47–832. Veterans of Foreign Wars—Lots 38, 20, 19, and 841.
47–833. National Woman's Party—Lots 863, 864, and 885.
47–834. American Association of University Women—Lot 834.
47–835. National Guard Association—Lot 60.
47–836. Woodrow Wilson House—Lots 36 and 37.

§ 47–801. Repealed. Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 7 (c, g).

Section, acts Mar. 3, 1877, 19 Stat. 399, 402, ch. 117 §§ 8, 18; Aug. 15, 1916, 39 Stat. 514, ch. 342, listed specific property which was exempt from taxation and is now covered by § 47–801a.

§ 47–801a. Government property—Property of educational, charitable, religious or scientific institutions—Profits arising from sale of property.

The real property exempt from taxation in the District of Columbia shall be the following and none other:

(a) Property belonging to the United States of America.

(b) Property belonging to the District of Columbia.

(c) Property belonging to foreign governments and used for legation purposes.

(d) Property belonging to the Commonwealth of the Philippines and used for Government purposes.

(e) Property heretofore specifically exempted from taxation by any special Act of Congress, in force December 24, 1942, so long as such property is used for the purposes for which such exemption is granted. The Commissioners of the District of Columbia shall report annually to the Congress the use being made of such specifically exempted property, and of any changes in such use, with recommendations.

(f) Art gallery buildings belonging to and operated by organizations which are not organized or operated for private gain, and are open to the public generally, and for admission to which no charge is made on more than two days each week.

(g) Library buildings belonging to and operated by organizations which are not organized or operated for private gain and are open to the public generally.

(h) Buildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia.

(i) Hospital buildings, belonging to and operated by organizations which are not organized or operated for private gain, including buildings and structures reasonably necessary and usual to the operation of a hospital.

(j) Buildings belonging to and operated by schools, colleges, or universities which are not organized or operated for private gain, and which embrace the generally recognized relationship of teacher and student.

(k) Buildings belonging to and used in carrying on the purposes and activities of the National Geographic Society, American Pharmaceutical Association, The Medical Society of the District of Columbia, the National Lutheran Home, the National Academy of Sciences, Brookings Institution, the American Forestry Association, the American Tree Association, the Carnegie Institution of Washington, the American Chemical Society, the American Association to Promote the Teaching of Speech to the Deaf, and buildings belonging to such similar institutions as may be hereafter exempted from such taxation by special Acts of Congress.

(*l*) Cemeteries dedicated to and used solely for burial purposes and not organized or operated for private gain, including buildings and structures reasonably necessary and usual to the operation of a cemetery.

(m) Churches, including buildings and structures reasonably necessary and usual in the performance of the activities of the church. A church building is one primarily and regularly used by its congregation for public religious worship.

(n) Buildings belonging to religious corporations or societies primarily and regularly used for religious worship, study, training, and missionary activities.

(*o*) Pastoral residences actually occupied as such by the pastor, rector, minister, or rabbi of a church: *Provided,* That such pastoral residence be owned by the church or congregation for which said pastor, rector, minister, or rabbi officiates: *And provided further,* That not more than one such pastoral residence shall be so exempt for any one church or congregation.

(p) Episcopal residences owned by a church and used exclusively as the residence of a bishop of such church.

(q) Buildings belonging to organizations which are charged with the administration, coordination, or unification of activities, locally or otherwise, of institutions or organizations entitled to exemption under the provisions of sections 47–801a, 47–801b and 47–801c to 47–801f, and used as administrative headquarters thereof.

(r) (1) Grounds belonging to and reasonably required and actually used for the carrying on of the activities and purposes of any institution or organization entitled to exemption under the provisions of sections 47–801a, 47–801b and 47–801c to 47–801f.

(2) Additional grounds belonging to and forming a part of the property of such institutions or organizations as of July 1, 1942. Such exemption shall be granted only upon the filing of a written application to the Commissioners, supported by an affidavit that such additional grounds are not held for profit or sale but only for the enlargement and expansion of said institution or organization.

If, however, at any future date the grounds so exempted, or any portion thereof, shall be sold and a profit shall result from such sale the taxes thereon for each year from the date of acquisition of such property for which no tax has been paid shall immediately become due and payable, without interest: *Provided, however,* That the total of such taxes shall not exceed 50 per centum of the net profit derived from such sale. The Commissioners shall be furnished a copy of the contract of sale together with other evidence necessary to establish the amount of profit or loss therefrom at least ten days prior to the

date of settlement of such sale. Taxes assessed under this subparagraph shall constitute a lien upon such property. (Dec. 24, 1942, 56 Stat. 1089, ch. 826, § 1; Apr. 9, 1943, 57 Stat. 61, ch. 41, § 1.)

AMENDMENT

1943—Act Apr. 9, 1943, amended par. (k) by inserting after "the American Forestry Association" the words "the American Tree Association."

EFFECTIVE DATE OF 1943 AMENDMENT

Section 2 act Apr. 9, 1943, provided that: "The amendment made by this Act [to this section] shall take effect as of December 24, 1942."

NOTES TO DECISIONS

Additional grounds

Where religious corporation, owning two contiguous lots, on one of which a synagogue stood where religious services were conducted regularly, claimed as to other contiguous lot that it was entitled in prior years to exemption from taxation as "additional grounds" within this section granting exemption for such additional grounds but with proviso for taxing, not in excess of 50% of net profit of sale in event land was later sold at a profit, corporation subsequent to sale of part of lot at an alleged profit was not estopped from claiming that such lot was entitled to an unqualified exemption as ground belonging to and reasonably required and actually used for carrying on activities of religious organization. *District of Columbia* v. *Chevrah Tifereth Israel* (C.A.D.C. 1960, 280 F. 2d 61).

This section imposing real estate tax upon "additional grounds" of religious institutions which are sold at profit after having been previously exempt, requires that taxing authority classify grounds involved as either those required and used for actually carrying on purposes of institution, or as "additional grounds". *Simpson Memorial Methodist Ch.* v. *District of Columbia* (1952, 199 F. 2d 169, 91 U. S. App. D. C. 105).

Administrative review

Under this section providing that payment of tax on property claimed to be exempt "shall not be prerequisite" to an appeal to Board of Tax Appeals, Congress intended such remedy to be an exclusive one for review of action of assessing authorities, and hence municipal court lacked jurisdiction of action by taxpayer, which did not appeal to the Board of Tax Appeals, to recover taxes on property claimed to be exempt. *Workshop Center of Arts* v. *District of Columbia* (D.C. Mun. App. 1958, 145 A. 2d 571).

Except in cases of absolute exemption, the tax exemption of each year is dependent on the use to which property is put, and original determination of exemption or absence thereof is largely an administrative question for the assessing authorities, and administrative review is available to the Tax Court and review of its decision is available in the United States Court of Appeals for the District of Columbia. *Id.*

Application for exemption

Commissioners of District of Columbia had no power to exempt real estate of institutional owner where application for exemption came after property had been assessed for year, and an appeal within ninety days after the tax statement was mailed was its only remedy. *Congregational Home of District of Columbia* v. *District of Columbia* (1953, 202 F. 2d 808, 92 U.S. App. D.C. 73).

Charitable organizations

Where tax-exempt organization owned house in which its president lived and expected him to use same for its purposes, and he paid no rent, house and its yard were not subject to tax. *District of Columbia* v. *The Brookings Institution* (1958, 254 F. 2d 955, 103 U.S. App. D.C. 98).

Organization which operated a residential settlement house, including classes and social activities for adults and children and day care of children, which charged moderate fees for its services based on individual's ability to pay, which derived its income largely from charitable sources, and which paid its officers no salary, was a "charity" and its realty was exempt from taxation, though organization received fees from those who could afford to pay, and though a few of the beneficiaries could perhaps pay more than they did for services received. *District of Columbia* v. *Friendship House Ass'n.* (1952, 198 F. 2d 530, 91 U.S. App. D.C. 137).

It is not necessary for an organization, in order to qualify as a "charity" whose realty is exempt from taxation, that it confine its activities to the furnishing of bare necessities of life, such as food, shelter, and clothing, and an activity is equally a charity when it affords some of the amenities of a decent life to those who are unable to pay anything at all or the full price thereof. *Id.*

Under this section exempting from taxation buildings belonging to institutions of purely public charity except if any portion of building or grounds is larger than is absolutely required and actually used for its legitimate purpose and none other, where lessor was public charity but building and grounds were larger than were absolutely required and actually used for the lessor's legitimate purpose, the fact that lessee was also a public charity would not exempt the building from taxation. *Hebrew Home for the Aged* v. *District of Columbia* (1944, 142 F. 2d 573, 79 U.S. App. D.C. 64).

Where both lessor and lessee where public charities and lessee agreed to erect building which at expiration of term would become lessor's property, the building and the land were "larger than was absolutely required and actually used" for the lessor's legitimate purposes within this section granting exemption from taxation and therefore the building was not exempt from taxation. *Id.*

Under subsection (h) of this section granting exemption from taxation of buildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia, a concurrence of ownership and operation in one institution is not essential, but there must be use by charitable organization and ownership by a charitable organization. *Catholic Home for Aged Ladies* v. *District of Columbia* (1947, 161 F. 2d 901, 82 U. S. App. D. C. 195).

Where charitable organization transferred home to its charitable auxiliary which operated charitable home for old ladies, the home was exempt from taxation, notwithstanding the property was not used by owner. *Id.*

Congressional intent

Appellant's contention that the United States, to protect its lien, was obligated to pay District taxes assessed against the property after the federal lien arose, is without foundation since the general policy of the United States is not to pay real estate taxes to the District of Columbia in the absence of evidence of Congressional intent to create such suggested exception to this policy. *Cobb* v. *United States* (1949, 172 F. 2d 277, 84 U. S. App. D. C. 228).

Construction

District of Columbia tax exemption accorded organizations charged with administration, coordination, or unification of activities of exempt institutions or organizations does not require that organization claiming exemption administer, coordinate or unify only those activities in which it is dealing with third parties, and is not limited to organizations which have direct authority over their members. *Conference of Major Religious Superiors of Women, Inc.* v. *District of Columbia* (1965, 348 F. 2d 783, 121 U.S. App. D.C. 171).

Organization of religious superiors of women, active on behalf of members of religious orders or communities of which members of organization were respectively mother superior, was entitled to District of Columbia deed recordation tax exemption as organization charged with administration, coordination or unification of exempt organizations, although it did not deal with those activities of communities in which communities dealt with third parties and did not have direct authority over members. *Id.*

Organization of religious superiors of women, claiming District of Columbia tax exemption, was not required to establish that each of communities represented by its members was entitled to exemption, and prima facie showing was made by evidence sufficient to demonstrate status of constituent communities as representative. *Id.*

Under paragraph of this section relating to exemptions from taxation of realty owned by religious institutions,

and providing in first numbered subparagraph for exemption of grounds required and used by such institutions, and in second numbered subparagraph for exemption of additional grounds, and in third unnumbered subparagraph for imposition of realty tax upon sale at profit in the future, third unnumbered subparagraph was part of second and indicated intention that such tax was to be imposed only in relation to sale of such additional grounds. *Simpson Memorial Methodist Ch.* v. *District of Columbia* (1952, 199 F. 2d 169, 91 U.S. App. D.C. 105).

Statute defining taxable income for income tax purposes has no bearing upon this section relating to imposition of real property tax upon previously exempt additional grounds of religious institution which have been sold at profit, and fact that determination of gain or loss on sale of church properties was not in accord with income tax statute could not invalidate assessment. *Id.*

Construction of exemption

Exemptions from taxation are construed strictly. *Hebrew Home for the Aged* v. *District of Columbia* (1944, 142 F. 2d 573, 79 U. S. App. D. C. 64). See, also, *Bethel Pentecostal Tabernacle, Inc.* v. *District of Columbia* (D. C. Mun. App. 1954, 106 A. 2d 143).

Tax exemptions must be strictly construed. *Combined Congregations of District of Columbia* v. *Dent* (1944, 140 F. 2d 9, 78 U. S. App. D. C. 254).

Date of exemption

Where charitable organization acquired a building in January, 1957, to house its activities, but extensive remodeling was required before the building could be used for the intended purpose, and a contract for construction and installation of an elevator was executed in May of 1957, building was exempt from realty taxes for fiscal year beginning July 1, 1957, notwithstanding fact contract for general renovation was not signed until July 9, 1957. *District of Columbia* v. *The Salvation Army* (1959, 264 F. 2d 371, 105 U.S. App. D.C. 85).

Educational purposes

Where corporation conducted school for preparation of young men for entrance examinations to military academies of United States and to afford the students training for a successful career in military and naval services of United States, and control of future of school was placed in hands of trustees but assets subject to such control could be used only for the designation of a school, college, university or fund not organized or operated for private gain, the corporation was not "organized" for private gain within this section exempting from taxation buildings belonging to and operated by schools not organized for private gain. *Service Schools Foundation* v. *District of Columbia* (1960, 276 F. 2d 517, 107 U.S. App. D.C. 271).

Where the Court of Appeals, contrary to District of Columbia Tax Court, determined that corporation operating a school was not "organized" for gain so as to be entitled to tax exemption under this section, and the Tax Court had not considered the question whether such school was "operated" for private gain, the Court of Appeals would not pass on such question initially but would permit the Tax Court to consider the matter. *Id.*

Where George Washington University, prior to assessment day, had purchased two buildings which required remodeling before they could be used for university purposes, and on assessment day the alteration of one of the buildings was actually in progress and on the other preliminary work which was necessary to prepare it for remodeling was then being done, the buildings were within provision of this section exempting from taxation "buildings belonging to and operated by" universities which are not organized or operated for private gain and which embrace the general recognized relationship of teacher and student. *District of Columbia* v. *The George Washington University* (1958, 262 F. 2d 36, 104 U.S. App. D.C. 324).

Automobile parking spaces owned by George Washington University and rented to students for nominal fee of 20 cents a half-day, a fee not shown to exceed cost of operation, were exempt from District of Columbia realty taxation under this section providing exemption for grounds belonging to and reasonably required and actually used for carrying on the activities and purposes of university not organized or operated for private gain. *District of Columbia* v. *The George Washington University* (1957, 243 F. 2d 246, 100 U.S. App. D.C. 140).

Parking lots owned by university for free use of its faculty members or employees were used for carrying on activities and purposes of university, and were reasonably required, within this section exempting such grounds from taxation by District of Columbia. *District of Columbia* v. *The George Washington University* (1955, 221 F. 2d 87, 95 U.S. App. D.C. 214).

In order to qualify under this section exempting real estate belonging to educational institutions from taxation in District of Columbia, institution must render service which relieves District of Columbia of burden it otherwise might assume. *Washington Chapter of American Institute of Banking* v. *District of Columbia* (1953, 203 F. 2d 68, 92 U.S. App. D.C. 139).

Where prime objective of institution was not education or elevation of public or of some reasonable cross-section thereof, but merely training of bank employees so as to render them more efficient, institution's real estate was not exempt from taxation under this section exempting real property of educational institutions from taxation in District of Columbia. *Id.*

Where, after institution of suit to obtain a declaratory judgment that certain property was used for educational purposes and therefore not taxable, Congress adopted this chapter declaring that the property and other similar property in District of Columbia was not taxable, determination in favor of owner of property was affirmed. *District of Columbia* v. *American Pharmaceutical Ass'n* (1943, 133 F. 2d 43, 77 U. S. App. D. C. 94).

Where university acquired realty, income from which was used only to accumulate funds for purchase of additional property with intention of erecting buildings on realty for use in connection with university's educational facilities and also acquired other realty, income from which was used for educational purposes, the realty was not exempt from taxation under Act Mar. 2, 1867, 14 Stat. 438, as amended by Act May 23, 1938, 52 Stat. 351, exempting property of university "used only for education of youth". *Howard University* v. *District of Columbia* (1946, 155 F. 2d 10, 81 U. S. App. D. C. 40, certiorari denied 67 S. Ct. 53, 329 U. S. 739, 91 L. Ed. 638).

Where education phase of corporation was at most incidental and collateral to the social, recreative, promotional, and propaganda phases which constituted its major reasons for existence, it was not exempt from tax. *Hazen* v. *National Rifle Assn.* (1939, 101 F. 2d 432, 69 App. D.C. 339).

Mt. Vernon Seminary was exempt from taxation as a corporation whose property was held solely for educational purposes, even though its receipts had exceeded its expenditures, resulting in a net profit to the institution. *District of Columbia* v. *Mt. Vernon Seminary* (1939, 100 F. 2d 116, 69 App. D.C. 251).

If school measures up to standards of curriculum and pedagogy set by the Government it comes within the reason for the subsidy which is implicit in a tax exemption. *Id.*

Questions of fact

Where record before Board of Tax Appeals was such as to permit findings of fact and conclusion to be made as to whether certain property was "additional grounds" of religious institution, with result that proceeds from sale thereof would be subject to imposition of realty tax to extent of one-half of profit, in absence of such findings having been made, court would not undertake to do so, but would remand case in order that findings might be made initially by the Board. *Simpson Memorial Methodist Ch.* v. *District of Columbia* (1952, 199 F. 2d 169, 91 U.S. App. D.C. 105).

Religious corporations

A Washington Ethical Society which holds regular Sunday services and has "leaders" to preach and minister to the members who are trained graduates of established theological institutions qualifies as a "religious corporation or society" and its building is one primarily and regularly used for public religious worship and entitled to tax exemption under this section. *Washington Ethical Society* v. *District of Columbia* (1957, 249 F. 2d 127, 101 U.S. App. D.C. 371).

Belief in or teaching of a Supreme Being or supernatural power is not essential to qualify for tax exemption accorded to "religious corporations," "churches" or "religious societies," under this section. *Id.*

Old church building, which was leased by church to another religious body for religious services, the church reserving the right to hold services at times which would not conflict with those of the lessee, was not primarily and regularly used by its congregation for public "religious worship", within this section granting tax exemption to church buildings so used. *Trustees of St. Paul Methodist Episcopal Church South* v. *District of Columbia* (1954, 212 F. 2d 244, 94 U.S. App. D.C. 78).

In this section granting exemption from taxation to a church building primarily and regularly used by "its" congregation for public religious worship, the antecedent of quoted word is the religious organization which owns the building, and hence concurrence of ownership and use is essential to the exemption. *Id.*

To entitle property owned by a religious corporation to exemption from taxation under subsection (n) of this section, two elements must be established, namely, that the building belongs to a religious corporation or society and that it is primarily and regularly used for religious worship, study, training, and missionary activities. *Calvary Baptist Church Extension Ass'n* v. *District of Columbia* (1947, 158 F. 2d 327, 81 U. S. App. D. C. 330).

Where church organization, desiring to construct a Sunday school building on its property, organized a separate corporation to avoid effect of a restrictive covenant in deed to the church limiting church indebtedness, and building constructed by separate corporation was used for Sunday school purposes and by other organizations of which the church organization was a part, the entire building so constructed was exempt from taxation under subsection (n) of this section. *Id.*

This section exempting "churches" from taxation refers to the building rather than the institution, and a separate structure maintained by Jewish Congregations for ceremonial baths was not within such exemption. *Combined Congregations of District of Columbia* v. *Dent* (1944, 140 F. 2d 9, 78 U.S. App. D.C. 254).

Under this section exempting churches from taxation and defining a church building as one primarily and regularly used by its congregation for public religious worship, building being prepared on tax day, for use as a church was not exempt, even though congregation gathered at irregular intervals to clean up building and engaged in prayer and singing in building before doing so. *Bethel Pentecostal Tabernacle, Inc.* v. *District of Columbia* (D.C. Mun. App. 1954, 106 A. 2d 143).

Under this section exempting churches from taxation, concurrence of ownership and use is essential to exemption, and religious corporation could not claim exemption for building, deed to which was not delivered until after tax day, even if the building had been used, on tax day, in a manner authorizing exemption. *Id.*

Review

On petition to review a decision of the District of Columbia Tax Court exempting from realty tax certain lots adjacent to a church building used for parking of church members' automobiles during services, evidence sustained finding that lots in question were reasonably required and actually used for the carrying out of the activities and purposes of the church. *District of Columbia* v. *Church of the Pilgrims* (1957, 247 F. 2d 59, 101 U.S. App. D.C. 68).

§ 47–801a–1. Disabled American Veterans property.

The property situated in square 153 in the city of Washington, District of Columbia, described as lot 132, owned, occupied, and used by the Disabled American Veterans, is hereby exempt from all taxation so long as the same is so owned and occupied, and not used for commercial purposes, subject to the provisions of sections 47–801b, 47–801c and 47–801e. (May 15, 1946, 60 Stat. 181, ch. 257, § 1.)

§ 47–801a–2. National Society of the Colonial Dames of America.

The property in the District of Columbia described as lot numbered 801, in square numbered 1285, together with the improvements thereon, known as premises number 2715 Q Street Northwest, and the furnishings therein, owned by the National Society of the Colonial Dames of America, a corporation organized and existing under the laws of the District of Columbia, shall be exempt from taxation, national and municipal, so long as the same is used for nonprofit purposes. (Sept. 7, 1949, 63 Stat. 694, ch. 564.)

§ 47–801b. Income producing property of exempt institutions.

If any building or any portion thereof, or grounds, belonging to and actually used by any institution or organization entitled to exemption under the provisions of sections 47–801a and 47–801c to 47–801f are used to secure a rent or income for any activity other than that for which exemption is granted such building, or portion thereof, or grounds, shall be assessed and taxed. (Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 2.)

NOTES TO DECISIONS

Rental of rooms

Where unmarried rector occupied rectory as part of his compensation, fact that rector rented three rooms in the rectory to persons other than his immediate family to help cover household expenses was not the use of the building "to secure income for an activity other than that for which the exemption was granted" so as to annul exemption from real estate taxes provided by § 47–801a for pastoral residence owned by church. *District of Columbia* v. *Vestry of St. James Parish* (1946, 153 F. 2d 621, 80 U. S. App. D. C. 314).

§ 47–801b–1. Use of property by agencies of the United States or American Red Cross—Abatement of unpaid taxes.

The use and occupancy of real property in the District of Columbia by any department, agency, or instrumentality of the United States of America, or by the American Red Cross, on a basis which does not result in the receipt of rent or income to the owner thereof within the meaning of section 47–801b, shall not operate to terminate the tax-exempt status of such property if exempted from taxation prior to such use and occupancy; and, further, that any taxes, penalties, or interest which may be due by reason of such change in the use and occupancy of such property and unpaid on November 30, 1945 shall be abated: *Provided,* That nothing contained in this section shall be construed as authorizing any refund of any taxes, penalties, or interest paid prior to November 30, 1945. (Nov. 30, 1945, 59 Stat. 589, ch. 501.)

§ 47–801c. Report as to use of exempt property.

Every institution, organization, corporation, or association owning property exempt under the provisions of paragraphs (d) to (q), inclusive, of section 47–801a shall, on or before March 1, 1943, and on or before March 1 of each succeeding year, furnish the Commissioners of the District of Columbia a report, under oath, showing the purposes for which its exempt property has been used during the preceding calendar year. Upon written application by the

institution, organization, corporation, or association filed before March 1 of any year, the Commmissioners may extend the time for filing said report for a reasonable period. A copy of such report shall be forwarded to the Congress by the Commissioners.

If such report is not filed within the time provided herein, or as extended by the Commissioners, the property of the institution, organization, corporation, or association affected shall immediately be assessed and taxed until the required report is filed: *Provided, however,* That such tax shall be for a minimum period of thirty days. (Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 3.)

§ 47–801d. Abatement or refund of tax assessed against exempt property.

The Commissioners of the District of Columbia, upon written application by the owner of real property, filed within ninety days from December 24, 1942, are authorized to abate any tax assessed against any real property exempted by sections 47–801a, 47–801b and 47–801c to 47–801f where such tax was assessed after January 1, 1941, or to refund any such tax within the limitations of appropriations therefor. (Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 4.)

§ 47–801e. Appeal.

Any institution, organization, corporation, or association aggrieved by any assessment of real property deemed to be exempt from taxation under the provisions of sections 47–801a, 47–801b and 47–801c to 47–801f may appeal therefrom to the Board of Tax Appeals for the District of Columbia in the same manner and to the same extent as provided in sections 47–2403 and 47–2404: *Provided, however,* That payment of the tax shall not be prerequisite to any such appeal. (Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 5.)

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court and the member thereof to be known as the judge of the District of Columbia Tax Court, see § 47–2402.

NOTES TO DECISIONS

Administrative review

Except in cases of absolute exemption, the tax exemption in each year is dependent on the use to which property is put, and original determination of exemption or absence thereof is largely an administrative question for the assessing authorities, and administrative review is available to the Tax Court and review of its decision is available in the United States Court of Appeals for the District of Columbia. *Workshop Center of the Arts* v. *District of Columbia* (D.C. Mun. App. 1958, 145 A. 2d 571).

Amendment of pleadings

Where it was impossible to tell from complaint in action to remove certain property from tax rolls whether during certain years there was a synagogue as well as a place for taking ceremonial baths on premises involved, order dismissing amended complaint would be modified on appeal to allow an amendment so that it might be determined whether plaintiff was entitled to relief for such years. *Combined Congregations of District of Columbia* v. *Dent* (1944, 140 F. 2d 9, 78 U. S. App. D. C. 254).

Exclusive remedy

Under this section providing that payment of tax on property claimed to be exempt "shall not be prerequisite" to an appeal to Board of Tax Appeals, Congress intended such remedy to be an exclusive one for review of action of assessing authorities, and hence municipal court lacked jurisdiction of action by taxpayer, which did not appeal to the Board of Tax Appeals, to recover taxes on property claimed to be exempt. *Workshop Center of Arts* v. *District of Columbia* (D.C. Mun. App. 1958, 145 A. 2d 571).

Findings

Findings of Board of Tax Appeals for District of Columbia that a building was not primarily and regularly used for religious worship and study, and therefore was not exempt and there was no evidence upon which to base any apportionment of valuation were affirmed. *Fellowship Foundation* v. *District of Columbia* (1950, 179 F. 2d 56, 86 U.S. App. D.C. 40).

Time to appeal

Taxpayer could not toll running of 90 days period within which to appeal real estate tax assessment by merely returning to assessor the notice of assessment which taxpayer received and which determined beginning of the period. *Jewish War Veterans, Etc.* v. *District of Columbia* (1957, 243 F. 2d 646, 100 U.S. App. D.C. 223).

§ 47–801f. Rules and regulations.

The Commissioners are authorized to make and promulgate such rules and regulations as they may deem necessary to carry out the intent and purposes of sections 47–801a, 47–801b and 47–801c to 47–801f: *Provided,* That such rules and regulations shall include provision for mailing annually, on or before February 1 of each year, to each of the institutions, organizations, corporations, or associations required by section 47–801c to file annual reports, notice of its contingent tax liability under sections 47–801a, 47–801b and 47–801c to 47–801f, together with a copy of any standard form for such reports which shall have been prescribed by the Commissioners under authority of this section. (Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 6; Sept. 29, 1943, 57 Stat. 568, ch. 248.)

AMENDMENT

1943—Act Sept. 29, 1943, added the proviso.

§ 47–802. Repealed. Dec. 24, 1942, 56 Stat. 1092, ch. 826, § 7 (f).

Section, act July 1, 1902, 32 Stat. 616, ch. 1352, § 5, exempt from taxation property used for educational purposes, and is now covered by § 47–801a.

§ 47–803. Property of United States, District of Columbia, and foreign legations exempt from assessments for improvements.

No property except that of the United States or the District of Columbia and property owned by foreign governments for legation purposes shall be exempt from assessments for improvements. (Mar. 3, 1903, 32 Stat. 961, ch. 992.)

CROSS REFERENCE

Special assessments for improvements around the capitol, see § 47–1107.

§ 47–804. Repealed. Dec. 24, 1942, 56 Stat. 1092, ch. 826, § 7 (e).

Section, act Mar. 3, 1881, 21 Stat. 513, ch. 160, § 2, exempt, from taxation orphan asylums and grounds actually occupied thereby, and is now covered by § 47–801a.

§ 47–805. Louise Home.

The buildings and grounds of the Louise Home, and all property held by the trustees thereof for the purposes of the trust contained in a certain deed from William W. Corcoran dated November 21, 1869, and recorded in liber 630 at folio 458 of the land records of the District of Columbia, on the square numbered one hundred and ninety-six shall be free from all taxes and assessment by the municipal authorities, or by the United States, so long as the same shall be

held and used for the purposes of the said trust. (Mar. 3, 1875, 18 Stat. 508, ch. 168, § 2.)

§ 47–806. Sheridan tapestries.

No personal taxes be levied against certain tapestries, which were presented to the late Lieutenant-General Philip H. Sheridan for gallant and meritorious services, and which were on exhibition in the National Museum on April 27, 1904, so long as they are exhibited in said museum. (Apr. 27, 1904, 33 Stat. 364, ch. 1628.)

§ 47–807. Chesapeake and Ohio Canal.

For and in consideration of the expenses the said stockholders will be at, not only in cutting the Chesapeake and Ohio canal, erecting locks and dams, providing aqueducts, feeders, and other works, and in improving and keeping the same in repair, the said canal and all other works aforesaid, or required to improve the navigation thereof, at any time hereafter, with all their profits, subject to the limitations herein provided, and to none other, shall be, and the same are hereby, vested in the said stockholders, their heirs and assigns, forever, as tenants in common, in proportion to their respective shares, and be forever exempt from the payment of any tax, imposition, or assessment whatsoever. (General Assembly of Virginia, Jan. 27, 1824; 4 Stat. 796, Appendix I, § 9; Mar. 3, 1825, 4 Stat. 101, ch. 52.)

CODIFICATION

Act. Mar. 3, 1825, confirms the act of the legislature of the State of Virginia entitled "An act incorporating the Chesapeake and Ohio Canal Company," and "An act of the State of Maryland, confirming the same."

NOTES TO DECISIONS

In general

The provision in the charter which requires the jury to do what they would be competent to do without such provision, and which, in order to ascertain a compensation which should be just toward the public as well as toward the individual, they ought to do, cannot be considered repugnant to the Constitution. *Bauman* v. *Ross* (1897, 17 S. Ct. 966, 167 U. S. 548, 42 L. Ed. 270).

Forfeiture for nonuser

The question of forfeiture by nonuser could be established only by a direct proceeding on the part of the public authorities, and a decision to that effect in a proper tribunal, and cannot be made an issue for the first time in the trial of the question of private rights. *Mackall* v. *Chesapeake & Ohio Canal Co.* (1876, 94 U. S. 308, 4 Otto 308, 24 L. Ed. 161).

General creditors

A general creditor of the Chesapeake and Ohio Canal Company had notice of the statute granting said company its charter. *Macalester* v. *Maryland* (1885, 5 S. Ct. 1065, 114 U. S. 598, 29 L. Ed. 233).

Riparian rights

The Chesapeake and Ohio Canal Company does not own or possess riparian rights along the line of its canal within the limits of the city of Washington. *Morris* v. *United States* (1899, 19 S. Ct. 649, 174 U. S. 196, 43 L. Ed. 946).

§ 47–808. Oak Hill Cemetery—Property inalienable and exempt from taxation.

The property owned by "The Oak Hill Cemetery Company" shall be forever inalientable by the said corporation, and shall be exempted from all public assessments and taxes so long as the same shall remain dedicated to the purposes of a cemetery. (Mar. 3, 1849, 9 Stat. 775, ch. 128, § 10.)

§ 47–809. Corcoran Gallery of Art—Real property and works of art.

The buildings described in a certain deed from William W. Corcoran to the trustees of the Corcoran Gallery of Art, dated May 10th, 1869, and recorded May 18th, 1869, in liber D, No. 8, folio 294 et seq., one of the land records of Washington County, District of Columbia, and the grounds connected therewith, together with all of the works of art that may be contained therein, shall be free from all taxes and assessments by the municipal authorities, or by the United States, so long as the same shall be held and used for the purposes set forth in said deed. (May 24, 1870, 16 Stat. 139, ch. 111, § 4.)

§ 47–810. Corcoran Gallery of Art—Endowment fund.

All property held as endowment fund by the trustees of the Corcoran Gallery of Art, in the city of Washington, District of Columbia, for the purpose of revenue to support said institution, shall be, and the same is hereby, declared exempt from all taxation and assessments by the municipal authorities or by the United States so long as the same shall be so held. (Jan. 26, 1887, 24 Stat. 364, ch. 43.)

CODIFICATION

Act Jan. 26, 1887, contained the following proviso which has been omitted as obsolete: "*Provided,* That real estate purchased prior to January 26, 1887, by said trustees in the management of the endowment fund shall be exempt from taxation only while so held, and not to exceed five years from January 26, 1887."

§ 47–811. Howard University.

The property, real and personal, of the Howard University shall be exempt from taxation so long as such property shall be used only for the purposes set forth in the charter of said institution: *Provided,* That nothing in this section shall exempt any real estate of said university from assessment and liability for special improvements authorized by law: *Provided also,* That this section shall not include any real estate sold or contracted to be sold by said university to any other person than the United States, the title to which may be still in the said university. (June 16, 1882, 22 Stat. 105, ch. 222, § 3.)

NOTES TO DECISIONS

Income of property

Where university acquired realty, income from which was used only to accumulate funds for purchase of additional property with intention of erecting buildings on realty for use in connection with university's educational facilities and also acquired other realty, income from which was used for educational purposes, the realty was not exempt from taxation under act Mar. 2, 1867, 14 Stat. 438, as amended by act May 23, 1938, 52 Stat. 351, exempting property of university "used only for education of youth". *Howard University* v. *District of Columbia* (1946, 155 F. 2d 10, 81 U. S. App. D. C. 40, certiorari denied 67 S. Ct. 53, 329 U. S. 739, 91 L. Ed. 638).

§ 47–812. Luther Statue Association.

The lands acquired and held by the Luther Statue Association, and the statue erected thereon, and all the improvements and appurtenances thereto, shall be entirely exempt from taxation, and shall not be chargeable or assessed for any purpose whatever: *Provided,* That this section may be modified, repealed or amended, whenever Congress may see fit to do so. (Mar. 3, 1885, 23 Stat. 350, ch. 334, § 4.)

§ 47–813. Saint Mark's Protestant Episcopal Church.

A certain piece of land situated in the city of Washington, District of Columbia, known as lots nine and eleven, in square seven hundred and eighty-eight of the plan of that city, and occupied by the church known as Saint Mark's Protestant Episcopal Church, and all the buildings, grounds, and property appurtenant thereto and used in connection therewith in the District of Columbia, shall be exempt from any and all taxes or assessments, national, municipal, or county. (Feb. 23, 1887, 24 Stat. 411, ch. 214.)

§ 47–814. Young Woman's Christian Home.

The property, whether real or personal, owned by the "trustees of Young Woman's Christian Home" and used exclusively for the charitable purposes of said organization shall be exempt from taxation. (Feb. 23, 1887, 24 Stat. 413, ch. 217, § 2.)

§ 47–815. Young Women's Christian Association.

All property of the Young Women's Christian Association of the District of Columbia located in the District of Columbia and occupied and used by such association for its legitimate purposes shall be exempt from all national and municipal taxation so long as such property is so occupied and used. (June 16, 1938, 52 Stat. 709, ch. 461, § 1.)

§ 47–816. Young Women's Christian Association—Remission of accrued taxes.

The Young Women's Christian Association of the District of Columbia is hereby relieved from any accrued liability to the United States or the District of Columbia for taxes imposed upon any of the property of such association located in the District of Columbia for any tax period during which such property was occupied and used by such association for its legitimate purposes. (June 16, 1938, 52 Stat. 709, ch. 461, § 2.)

§ 47–817. Young Men's Christian Association.

All property belonging to the Young Men's Christian Association of the District of Columbia, used and occupied by that association, shall, so long as the same is so owned and occupied, be exempt from taxation, national and municipal: *Provided,* That where ground of said association is larger than is reasonably required for its use, or is not actually used for the legitimate purposes of said association, or if said ground or buildings shall be used for private gain, such portion of said ground or buildings as shall not actually be used for the purposes of said association, or from which it derives a rent or income, such portion of the same, or a sum equal in value to such portion, shall be taxed against such association. (Aug. 6, 1894, 28 Stat. 999, ch. 230.)

§ 47–818. Frederick Douglass Memorial and Historical Association.

When the Frederick Douglass Memorial and Historical Association shall have acquired title in fee simple to the whole or a part, as the case may be of the property known as Cedar Hill, in the village of Anacostia, in the District of Columbia, and formerly occupied as the homestead of the late Frederick Douglass, said land and premises shall be, and hereby are declared to be exempt from all taxes and assessments for taxation so long as the same shall be used for the purposes of this incorporation. Congress reserves the right to amend or repeal this section. (June 6, 1900, 31 Stat. 663, ch. 806, §§ 7, 8.)

§ 47–819. Edes Home.

The property held by The Edes Home actually and exclusively used and occupied for a home for aged and indigent widows shall while and as long as so actually and exclusively used and occupied, be free from any tax, burden, or assessment, laid or to be laid by the United States or under any authority emanating therefrom. This section shall be and remain at all times subject to repeal, alteration, or amendment by the Congress of the United States. (May 1, 1906, 34 Stat. 162, 163, ch. 2075, §§ 2, 6.)

§ 47–820. General Education Board.

All real property of the General Education Board within the District of Columbia which shall be used by the corporation for the educational or other purposes of the corporation as aforesaid, other than the purpose of producing income, and all personal property and funds of the corporation held, used, or invested for educational purposes as aforesaid, or to produce income to be used for such purposes, shall be exempt from taxation: *Provided, however,* That this exemption shall not apply to any property of the corporation which shall not be used for, or the income of which shall not be applied to, the educational purposes of the corporation: *And provided further,* That the corporation shall annually file with the Secretary of the Interior of the United States a report in writing, stating in detail the property, real and personal, held by the corporation, and the expenditure or other use or disposition of the same or the income thereof during the preceding year.

This section shall be subject to alteration, amendment, or repeal at the pleasure of the Congress of the United States. (Jan. 12, 1903, 32 Stat. 769, ch. 91, §§ 6, 7.)

§ 47–821. Daughters of American Revolution—Lots 8, 9, and 10, square 173.

The property situated in square numbered 173 in the city of Washington, District of Columbia, described as lots 8, 9, and 10, inclusive, occupied by the Daughters of the American Revolution, is hereby exempt hereafter (May 21, 1924) from all taxes, so long as the same is so occupied and used, subject to the provisions of section 47–801, providing for exemptions of church and school property, and Acts amendatory thereof. (May 21, 1924, 43 Stat. 135, ch. 163.)

REFERENCES IN TEXT

Section 47–801, referred to in the text, was repealed by act Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 7 (c), (g), and is now covered by section 47–801a.

§ 47–822. Daughters of the American Revolution—Square 173.

That the property situated in square numbered one hundred and seventy-three, in Washington City, District of Columbia, occupied on February 27, 1903 by the Daughters of the American Revolution is hereby exempt from all taxation so long as the same is so occupied and used, subject to the provisions of section 47–801, providing for exemptions of church

and school property, and Acts amendatory thereof. (Feb. 27, 1903, 32 Stat. 907, ch. 852.)

REFERENCES IN TEXT

Section 47–801, referred to in the text, was repealed by act Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 7 (c), (g), and is now covered by §§ 47–801a, 47–801b and 47–801c to 47–801f.

§ 47–823. Daughters of the American Revolution—Lots 12, 13, 14, 15, and 16.

The property situated in square one hundred and seventy-three in the city of Washington, District of Columbia, described as lots twelve, thirteen, fourteen, fifteen, and sixteen, inclusive, occupied by the Daughters of the American Revolution, is exempt from and after February 28, 1921, from all taxation so long as the same is so occupied and used, subject to the provisions of section 47–801, providing for exemptions of church and school property, and Acts amendatory thereof. (Sept. 16, 1922, 42 Stat. 846, ch. 319.)

REFERENCES IN TEXT

Section 47–801, referred to in the text, was repealed by act Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 7 (c), (g), and is now covered by §§ 47–801a, 47–801b and 47–801c to 47–801f.

§ 47–824. Daughters of the American Revolution—Lots 23, 24, 25, 26, 27, and 28.

The property situated in square one hundred and seventy-three in the city of Washington, District of Columbia, described as lots twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, and twenty-eight, inclusive, occupied by the Daughters of the American Revolution, is hereby exempt from all taxation so long as the same is so occupied and used, subject to the provisions of section 47–801, providing for exemptions of church and school property, and Acts amendatory thereof. (Aug. 15, 1916, 39 Stat. 514, ch. 342.)

REFERENCES IN TEXT

Section 47–801, referred to in the text, was repealed by act Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 7 (c), (g), and is now covered by §§ 47–801a, 47–801b and 47–801c to 47–801f.

§ 47–825. Daughters of the American Revolution—Lots 4, 5, 6, 7, and 11.

The property situated in square one hundred and seventy-three in the city of Washington, District of Columbia, described as lots four, five, six, seven, and eleven, inclusive, occupied by the Daughters of the American Revolution, is hereby exempt from and after February 23, 1916, from all taxation so long as the same is so occupied and used, subject to the provisions of section 47–801, providing for exemptions of church and school property, and Acts amendatory thereof. (Mar. 3, 1917, 39 Stat. 1009, ch. 160.)

REFERENCES IN TEXT

Section 47–801, referred to in the text, was repealed by act Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 7 (c), (g), and is now covered by §§ 47–801a, 47–801b and 47–801c to 47–801f.

§ 47–826. National Society United States Daughters of 1812—Lot 811.

The property situated in square numbered 210 in the city of Washington, District of Columbia, described as lot 811, occupied and used by the National Society United States Daughters of 1812, is hereby exempt from all taxation so long as the same is so occupied and used, subject to the provisions of section 47–801, providing for exemptions of church and school property. (June 4, 1934, 48 Stat. 836, ch. 376.)

REFERENCES IN TEXT

Section 47–801, referred to in the text, was repealed by act Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 7 (c), (g), and is now covered by §§ 47–801a, 47–801b and 47–801c to 47–801f.

§ 47–827. National Society of the Sons of the American Revolution.

All property, real and personal, belonging to or held by the National Society of the Sons of the American Revolution in the District of Columbia, used, and occupied by that society for its purposes, so long as the same is so owned, used, and occupied, is exempt from taxation, national and municipal. (June 16, 1934, 48 Stat. 972, ch. 547; Oct. 25, 1949, 63 Stat. 888, ch. 709, § 1.)

AMENDMENT

1949—Act Oct. 25, 1949, inserted the words "real and personal" after the words "property"; added the words "for its purposes" after the words "by that society"; and inserted the words "so owned, used and occupied" in lieu of the words "owned and occupied".

ABATEMENT OF TAXES

Sec. 2 of act Oct. 25, 1949, provided that: "The Commissioners of the District of Columbia are hereby authorized, upon written applicaton filed within ninety days after approval of this Act [Oct. 25, 1949], to abate any tax heretofore assessed in respect to the property exempted by the provisions of this Act [this section]."

§ 47–828. The American Legion—Lots 32 and 33.

The property situated in square 185 in the city of Washington, District of Columbia, described as lots 32 and 33, owned, occupied, and used by The American Legion, is hereby exempt from all taxation so long as the same is so owned and occupied, and not used for commercial purposes, subject to the provisions of section 47–801, providing for exemptions of church and school property. (June 13, 1934, 48 Stat. 953, ch. 493.)

REFERENCES IN TEXT

Section 47–801, referred to in the text, was repealed by act Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 7 (c), (g), and is now covered by §§ 47–801a, 47–801b and 47–801c to 47–801f.

§ 47–829. National Education Association.

All real property of the National Education Association of the United States within the District of Columbia, which shall be used by the corporation for the educational or other purposes of the corporation, other than the purpose of producing income, and all personal property and funds of the corporation, held, used, or invested for educational purposes aforesaid, or to produce income to be used for such purposes, shall be exempt from taxation: *Provided, however,* That this exemption shall not apply to any property of the corporation which shall not be used for or the income of which shall not be applied to the educational purposes of the corporation. Congress may from time to time alter, repeal, or modify this section, but no contract or individual rights made or acquired shall thereby be divested or impaired. (June 30, 1906, 34 Stat. 805, 808, ch. 3929, §§ 4, 11.)

§ 47–830. Society of the Cincinnati—Lots 42, 43, 49, and part of lot 5.

The property situated in square numbered 67 in the city of Washington, District of Columbia, described as lot numbered 42, as per plat recorded in the office of the surveyor for the District of Columbia, in liber 27 at folio 135; lot numbered 43, as per plat recorded in said surveyor's office in liber 28 at folio 25; lot numbered 49 as per plat recorded in said surveyor's office in liber 40 at folio 15; and part of original lot numbered 5 described as follows: Beginning for the same at the northeast corner of said lot and running thence west along the south line of a public alley thirty feet wide forty-seven and seventeen one-hundredths feet to the east line of another public alley, thirty feet wide; thence south along the east line of said alley seventy-four feet; thence east forty-seven and seventeen one-hundredths feet to the west line of a public alley fifteen feet wide; thence north along the west line of said alley seventy-four feet to the place of beginning, occupied by the Society of the Cincinnati, a corporation of the District of Columbia, with all the buildings and improvements thereon, and the contents thereof are hereby exempt from all taxes so long as the same is so occupied and used, subject to the provisions of section 47–801, providing for the exemption of church and school property, subject to the proviso that said society shall maintain therein a national museum for the custody and preservation of historical documents, relics, and archives, especially those pertaining to the American Revolution, which museum shall be accessible to the public at such reasonable hours and under such regulations as may, from time to time, be prescribed by said society; and subject to the further proviso that if any part of said property is sold, then the exemption as to said part and said part only shall determine and if any part of said property is leased then the exemption shall cease for so long and so long only as said part is so leased. This exemption to become effective on February 24, 1938. (Feb. 24, 1938, 52 Stat. 81, ch. 35.)

REFERENCES IN TEXT

Section 47–801, referred to in the text, was repealed by act Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 7 (c), (g), and is now covered by §§ 47–801a, 47–801b and 47–801c to 47–801f.

§ 47–831. American Veterans of World War II—Lot 805.

The property situated in square 160 in the city of Washington, District of Columbia, described as lot 805, owned, occupied, and used by the AMVETS, American Veterans of World War II, is hereby exempt from all taxation so long as the same is so owned and occupied, and not used for commercial purposes, subject to the provisions of sections 47–801b, 47–801c and 47–801e. (June 28, 1952, 66 Stat. 285, ch. 484, § 1.)

§ 47–832. Veterans of Foreign Wars—Lots 38, 20, 19, and 841.

The property situated in square 757 in the city of Washington, District of Columbia, described as lots 38, 20, 19, and 841 owned by the Veterans of Foreign Wars of the United States, is hereby exempt with respect to taxable years beginning on and after July 1, 1959, from all taxation so long as the same is owned and occupied by the Veterans of Foreign Wars of the United States and is not used for commercial purposes, subject to the provisions of sections 47–801b, 47–801c, and 47–801e. (July 19, 1954, 68 Stat. 493, ch. 543, § 1; Sept. 21, 1959, 73 Stat. 599, Pub. L. 86–333, § 1; Apr. 22, 1960, 74 Stat. 68, Pub. L. 86–430, § 1.)

AMENDMENTS

1960—Act Apr. 22, 1960, included lot 841 and inserted words "with respect to taxable years beginning on and after July 1, 1959."

1959—Act Sept. 21, 1959, substituted "square 757" for "square 724", and "lots 38, 20, and 19" for "lots 819 to 824."

§ 47–833. National Woman's Party—Lots 863, 864, and 885.

Certain property in the District of Columbia, known in the sixteen hundreds and seventeen hundreds as Cerne Abbey Manor; later the property of members of the distinguished Carroll and Sewall families, still later the office and residence of Albert Gallatin, Secretary of the Treasury, 1801–1813, who here directed the financing of the Louisiana Purchase; since 1929 the headquarters of the National Woman's Party and known as the Alva Belmont House—described as lots numbered 863, 864, and 885 in square numbered 725, together with improvements thereon and outbuildings, and the furniture, furnishings, and other personal property therein, owned by the National Woman's Party, Inc., a nonprofit corporation organized and existing under the laws of the District of Columbia—shall be exempt from taxation, in recognition of the patriotic efforts made by the National Woman's Party, Inc., to preserve this historic monument, so long as the same property is owned by said National Woman's Party, Inc., and is not used for commercial purposes or for the purpose of securing a rent or income, subject to the proviso that said corporation shall maintain the said property as historical buildings which shall be preserved for their architectural, historical, and educational significance, which buildings shall be accessible to members of the general public without charge or payment of a fee of any kind at such reasonable hours and under such regulations as may from time to time be prescribed by said corporation, subject to the provisions of sections 47–801b, 47–801c, and 47–801e. (Sept. 6, 1960, 74 Stat. 791, Pub. L. 86–706, § 1.)

EFFECTIVE DATE

Section 2 of act Sept. 6, 1960, provided that: "The tax exemption authorized by this Act [this section] shall take effect on July 1, 1960."

§ 47–834. American Association of University Women—Lot 834.

The real estate described for assessment and taxation purposes as lot 834 in square numbered 31, in the city of Washington, District of Columbia, owned by the American Association of University Women, Educational Foundation, Incorporated, a District of Columbia corporation, is hereby exempt from all taxation so long as the same is owned, occupied, and used by the American Association of University Women, Educational Foundation, Incorporated, for its educational and other corporate purposes, or is jointly occupied with the American Association of University Women, a Massachusetts corporation organized not for profit, for its educational

and other corporate purposes, and is not used for commercial purposes, subject to the provisions of sections 47–801b, 47–801c, and 47–801e. (Sept. 6, 1960, 74 Stat. 807, Pub. L. 86–709, § 1.)

EFFECTIVE DATE

Section 2 of act Sept. 6, 1960, provided that: "The tax exemption authorized by this Act [this section] shall take effect on July 1, 1960."

§ 47–835. National Guard Association—Lot 60.

The property situated in square 625 in the city of Washington, District of Columbia, described as lot 60, together with the improvements thereon, owned by the President, Vice President, Secretary, and Treasurer of the National Guard Association of the United States, as trustees and in trust for the use and benefit of the National Guard Association of the United States, a voluntary unincorporated association with principal headquarters in the District of Columbia, is hereby exempt from all taxation from and after July 1, 1961, so long as the same is owned by the President, Vice President, Secretary, and Treasurer of the National Guard Association of the United States, as trustees and in trust for the use and benefit of the National Guard Association of the United States and occupied by the National Guard Association of the United States, is used solely for the purposes of said Association, and is not used for commercial purposes, subject to the provisions of sections 47–801b, 47–801c, 47–801e. (Sept. 8, 1960, 74 Stat. 856, Pub. L. 86–727.)

§ 47–836. Woodrow Wilson House—Lots 36 and 37.

Certain property in the District of Columbia described as lots numbered 36 and 37 in square numbered 2,517, as recorded in the office of the Surveyor of the District of Columbia in liber 64, at folio 69, together with the improvements thereon and the furnishings therein, being premises numbered 2340 S Street Northwest, known as the Woodrow Wilson House, owned by the National Trust for Historic Preservation in the United States, a corporation chartered by Act of Congress approved October 26, 1949, be exempt from all taxation, so long as the same is used in carrying on the purposes and activities of the National Trust for Historic Preservation in the United States, and is not used for commercial purposes, subject to the provisions of sections 47–801b, 47–801c and 47–801e. Use of the premises by agencies of the United States of America or by any organization exempt from Federal income taxation for museum purposes or conference accommodations shall not affect the exemption from taxation provided for herein. (Aug. 21, 1964, 78 Stat. 581, Pub. L. 88–470, § 1.)

Chapter 9.—FAMILY DWELLINGS OCCUPIED BY OWNERS

Sec.

47–901. Quarterly payments—Statement of taxes—Interest.
47–902. Extension of time of payment.
47–903. Restrictions on sale for delinquent taxes.
47–904. Sales invalidated where based on errors in computation of taxes due.
47–905. Affidavit as to domicile and ownership.

§ 47–901. Quarterly payments—Statement of taxes—Interest.

Each fiscal year, commencing with the fiscal year ending June 30, 1934, the assessor of the District of Columbia shall send to the owner of each family dwelling-house occupied by such owner upon written application therefor an itemized statement of the taxes payable with respect to such dwelling-house not less than thirty days prior to the time when the first instalment of real-estate taxes for such fiscal year becomes due and payable. Such statement shall include all real-estate taxes which are due and payable in such fiscal year and all instalments of special assessments which have been levied, charged, or assessed prior to, and are due and payable in, such fiscal year, with respect to the family dwelling-house occupied by the owner. Such taxes and assessments shall be payable, at the election of the taxpayer, in four equal instalments, in the months of September, December, March, and June, and no interest shall be payable with respect to any such instalment unless it is unpaid after the time it is due. Any real-estate tax or special assessment or any instalment thereof with respect to any family dwelling-house occupied by the owner thereof not included in such statement shall not be due or payable during the fiscal year for which the statement is sent; and any such tax or assessment or any instalment thereof otherwise chargeable, assessable, or payable during such fiscal year shall be included in the statement for the next succeeding fiscal year. (Feb. 28, 1933, 47 Stat. 1347, ch. 130, § 1.)

§ 47–902. Extension of time of payment.

The collector of taxes of the District of Columbia shall extend the time for the payments of real-estate taxes and special assessments payable after January 1, 1933, on any family dwelling-house occupied by the owner thereof, or any instalment of such taxes or assessments, for not more than ninety days, if written application for such extension is filed with the collector before such taxes or instalment thereof are due. Such extension shall be granted only if, in the judgment of the collector of taxes, satisfactory evidence is presented by the owner that, through unemployment or other emergency, the owner is unable to make such payment. No such application shall be granted unless the application is accompanied by the payment, to the collector, of interest at the rate of 6 per centum per annum on the amount of the taxes or assessments or instalments thereof for the time of the extension applied for. In any case in which the amount of the tax or assessment or instalment due is paid prior to the expiration of the period of the extension there shall be deducted from the amount payable an amount equal to such part of the interest payable with respect thereto as represents the unexpired portion of the period of the extension. (Feb. 28, 1933, 47 Stat. 1348, ch. 130, § 2.)

§ 47–903. Restrictions on sale for delinquent taxes.

No family dwelling-house occupied by the owner thereof shall be sold for delinquent personal or real-estate taxes or special assessments unless notice has

been personally served upon such owner or sent by registered mail, addressed to him at such dwelling-house, not less than thirty days prior to the date of such sale. (Feb. 28, 1933, 47 Stat. 1348, ch. 130, § 3.)

§ 47–904. Sales invalidated where based on errors in computation of taxes due.

No sale for delinquent personal or real-estate taxes or special assessments with respect to a family dwelling-house owned by the occupier thereof shall be valid if such sale is in consequence of an error or omission in the computation of the amount of taxes due thereon. (Feb. 28, 1933, 47 Stat. 1348, ch. 130, § 4.)

§ 47–905. Affidavit as to domicile and ownership.

This chapter shall be deemed as applying only to such occupant and owner as shall have filed with the assessor of the District of Columbia an affidavit as to domicile and ownership. The form of the affidavit shall be prepared by the assessor of the District of Columbia, and shall show the beginning of domicile, the time when ownership began, the street number, the number of the square and lot, and all trusts, if any, against the property. (Feb. 28, 1933, 47 Stat. 1348, ch. 130, § 6.)

Chapter 10.—REAL PROPERTY TAX SALES

Sec.
47–1001. Delinquent tax list—Publication of notice—Competitive proposals—Sale.
47–1001a. Notice to record owner of amount of tax levy.
47–1002. Sale of property—Purchase by District.
47–1003. Deposit required — Certificate of sale — Tax deed—Redemption.
47–1004. Changed interest rates to apply only to sales after June 25, 1938.
47–1005. Property sold for taxes redeemable within 2 years from sale.
47–1006. Report of tax sale to be filed with recorder of deeds—Disposition of surplus on redemption.
47–1007. Commissioners not to convey any property if sale is void.
47–1008. Payment of expenses of advertising.
47–1009. Assessor to furnish information.
47–1010. Assessor to keep list of property sold for taxes for public inspection.
47–1011. Liens on real estate for unpaid taxes—Enforcement—Redemption before sale.
47–1012. Real estate to be sold—Notice to owner—Parties defendant—Court order—Validity of service and sale.
47–1013. Court to decree sale by collector of taxes—No penalty if defect in tax sale.
47–1014. Real estate sold—Confirmation of sale—Surplus paid into court—Delivery of deed.
47–1015. Validity of sales not affected by certain errors in computation.

REFUND OF TAXES

47–1016. Taxes erroneously paid to be refunded.
47–1017. Money paid for license not granted to be refunded.
47–1018. Disposition of money paid for redemption of property sold for taxes.

§ 47–1001. Delinquent tax list—Publication of notice—Competitive proposals—Sale.

The assessor of the District of Columbia shall prepare a list of all taxes on real property in said District subject to taxation on which said taxes are levied and in arrears on the first day of July of each year hereafter; and the commissioners of said District shall fix date of sale. The notice of sale and the delinquent tax list shall be advertised once a week for two weeks in the regular issue of one morning and one evening newspaper published in the District of Columbia; and notice shall be given, by advertising twice a week for two successive weeks in the regular issue of two daily newspapers published in the District of Columbia, that such delinquent tax list has been published in two daily newspapers, giving the name of each and the dates and the issues containing said list, and such notice shall be published in the two weeks immediately following the week in which the delinquent tax list shall have been published: *Provided further,* That competitive proposals shall be invited by the Commissioners from the several newspapers published in the District of Columbia for publishing the said delinquent tax list. If the taxes due, together with the penalties and costs that may have accrued thereon, shall not be paid prior to the day fixed for sale, the property will be sold, under the direction of the Commissioners of the District of Columbia, at public auction at the office of the said collector of taxes, commencing at least three weeks after the first publication of said notice and continuing on each following day, Sundays and legal holidays excepted, until all said delinquent property is sold; a description sufficient to identify the property shall be considered a proper description. (Feb. 28, 1898, 30 Stat. 250, ch. 32, § 1; July 1, 1902, 32 Stat. 632, ch. 1358, § 1(1); July 3, 1926, 44 Stat. 834, ch. 759, § 9; Mar. 2, 1927, 44 Stat. 1303, ch. 271; May 21, 1928, 45 Stat. 650, ch. 659; Feb. 25, 1929, 45 Stat. 1268, ch. 314.)

CODIFICATION

Acts Feb. 28, 1898, July 1, 1902, and July 3, 1926, contained a provision for the publication of a pamphlet and for notice of the publication thereof. Act Mar. 3, 1927, abolished this pamphlet and enacted provisions set out in the second sentence.

CROSS REFERENCES

Notice to owner under special provisions concerning family dwelling, see § 47–903.

Sale of lands to pay personal property taxes, see §§ 47–1301 to 47–1305.

Time for payment, delinquency, see § 47–1209.

NOTES TO DECISIONS

Construction with other laws

Sections 47–1001 to 47–1003 providing in part for public sale of delinquent tax property are not inconsistent with former section 800 of Title 20 of the 1929 D. C. Code providing an additional method for collecting taxes, and said former section 800 of former Title 20 did not repeal said §§ 47–1001 to 47–1003. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation* (1943, 134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

Requirement of notice

Publication of notice for two weeks, once a week in one newspaper, was proper to comply with the provisions of the District Code requiring publication, morning and evening, once a week, for two weeks. *Tayloe* v. *Kjaer* (1949, 171 F. 2d 343, 84 U. S. App. D. C. 183).

§ 47–1001a. Notice to record owner of amount of tax levy.

Annually and subsequent to July 1, the assessor of the District of Columbia shall mail to the record owner of each lot or parcel of land upon which a real estate tax has been levied by the District of Columbia as of July 1 of the same year, a notice of

the amount of such real estate tax, and of the manner in which the amount of such real estate tax is payable according to law; and such notice shall state whether there were any delinquent real estate taxes unpaid on July 1 of the year in which such notice is sent: *Provided,* That if the address of the owner be unknown, such notice shall be mailed to his agent, if known; and if there be more than one record owner of any lot or parcel, notice mailed to one of the owners shall be deemed compliance with this section: *Provided further,* That nothing in this section shall affect in any way the provisions of section 47–1103: *Provided further,* That failure of the property owner or his agent to receive such notice shall not relieve the property owner of the payment of any penalty or interest as required by law for the delinquent payment of real estate taxes. (June 25, 1938, ch. 702, § 12, as added Oct. 5, 1943, 57 Stat. 570, ch. 256.)

§ 47–1002. Sale of property—Purchase by District.

Upon the day specified in section 47–1001 the Commissioners shall proceed to sell or cause to be sold any and all property upon which such taxes remain unpaid, and continue to sell the same every secular day until all the real property as aforesaid in section 47–1001 shall have been brought to auction and sold. In case no other person bids the amount due, together with penalties and costs, on any lot, the said collector of taxes shall bid the amount due, together with penalties and costs, on the same and purchase it for the District. (Feb. 28, 1898, 30 Stat. 250, ch. 32, § 2; July 1, 1902, 32 Stat. 633, ch. 1358, § 1(2).)

AMENDMENT

1902—Act July 1, 1902, inserted the words "together with penalties and costs" in both places where they appear.

NOTES TO DECISIONS

Land subject to easements

Sale of real property for non-payment of taxes does not extinguish an easement with which the property is burdened. *District of Columbia* v. *Capital Mortg. & Title Co.* (D.C.D.C. 1949, 84 F. Supp. 788).

§ 47–1003. Deposit required—Certificate of sale—Tax deed—Redemption.

The collector of taxes shall require from every purchaser of property sold as aforesaid a deposit sufficient, in his judgment, to guarantee a full and final settlement for such purchase. Every purchaser other than the District of Columbia at any sale of property as aforesaid shall pay the full amount of his bid, including surplus, if any, to the collector of taxes within five days after the last day of sale, and in case such payment is not made within the time specified the deposit of the person so failing to make payment shall be forfeited to the District of Columbia, and said collector of taxes shall then issue the certificate of sale for such property to the next highest bidder, and if payment of the amount of the bid of said next highest bidder be not made within two days thereafter, the Commissioners of the District of Columbia shall set aside both sales for which the bids were made; and the said collector of taxes shall thereupon be held to have bid the amount due on the said lot and to have purchased it for the District. Immediately after the close of the sale, upon payment of the purchase money, the said collector of taxes shall issue to the purchaser a certificate of sale, and if the property shall not be redeemed by the owner or owners thereof within two years from the last day of sale, by payment to the collector of taxes of said District, for the use of the legal holder of the certificate, the amount for which it was sold at such sale, exclusive of surplus, and one per centum thereon for each month or part thereof, a deed shall be given by the Commissioners of the District, or their successors in office, to the purchaser at such tax sale, his heirs or devicees, or to the assignee of such certificates, which deed shall be admitted and held to be prima facie evidence of a good and perfect title in fee simple to any property bought at said sale herein authorized: *Provided,* That no deed shall be issued unless application therefor be made within five years from the last day of sale, and if no such application be made then the owner of any property sold as aforesaid, or any other person having an interest therein at the time of redemption, may redeem the property by paying to the collector of taxes for the legal holder of the certificate the amount for which it was sold at such sale, exclusive of surplus, plus interest thereon for the first two years after the date of such certificate of sale at the rate hereinabove provided, and for three years thereafter at the rate of 6 per centum per annum; that when the said property is redeemed as aforesaid, the collector of taxes shall, within five days thereafter notify the owner of record of such tax sale certificate at his last known address, by registered mail or by certified mail, of the redemption of such certificate; that within five years from the time that payment has been made to the collector of taxes to redeem such tax sale certificate, the owner thereof may apply for, and, upon the surrender of the certificate, shall receive from the District of Columbia the payment made as hereinbefore prescribed; that upon the failure of the owner of such tax sale certificate to apply within the period of five years, as hereinbefore prescribed, such money shall be forfeited to the District of Columbia, and be deposited by the collector of taxes in the Treasury of the United States to the credit of the general revenues of the District of Columbia: *Provided,* That no deed shall be issued until all taxes and assessments appearing upon the tax books against the property are paid, with penalties, interests, and costs, including taxes for the years for which the District purchased the property at tax sale: *Provided,* That no property advertised as aforesaid shall be sold upon any bid not sufficient to meet the amount of tax, penalty, and costs; but in case the highest bid on any property is not sufficient to meet the taxes, penalties, and costs thereon said property shall thereupon be bid off by the said collector of taxes, in the name of the District of Columbia; but the property so bid off shall not be exempted from assessment and taxation, but shall be assessed and taxed as other property; and if within two years thereafter such property is not redeemed by the owner or owners thereof, or their legal representatives, by the payment of the taxes, penalties and costs due at the time of the sale and that may have accrued after that date, and one per centum thereon for each month or part thereof,

or if any property two years after having been so bid off at any sale in the name of said District under sections 47–1001 to 47–1009 or any other law in force is not or has not been so redeemed as aforesaid (unless it shall be shown that the sale for taxes was irregular and void), then the commissioners of the District, or their successors shall in the name of and on behalf of the District of Columbia, sell said property at public or private sale and issue to any purchaser of such property a deed, which deed shall have the same force and effect as the deed hereinbefore provided for in this section for property sold at the regular annual sale: *Provided, however,* That no deed shall be issued until all assessments, taxes, costs, and charges due the District, of whatsoever nature, shall have been paid in full: *And provided also,* That minors or other persons under legal disability be allowed one year after attaining full age or after the removal of such legal disability to redeem the property so sold, or bid off by the collector of taxes in the name of the District of Columbia as aforesaid, from the purchaser or purchasers, his, her, or their assigns, or from the District of Columbia, on payment of the amount of purchase money so paid therefor, with eight per centum per annum interest thereon as aforesaid, together with all taxes and assessments that have been paid thereon by the purchaser or his assigns between the day of sale and the period of redemption with eight per centum per annum interest on the amount of such taxes and assessments. When such property is redeemed from a purchaser other than the District of Columbia, and when such property shall be redeemed from the District of Columbia, it shall, except as to the period of redemption, be upon the terms and conditions hereinabove provided for in the case of redemption by persons not under legal disability: *Provided, however,* That failure on the part of the District, from any cause whatsoever, to enforce the liens acquired aforesaid shall not release the property from any tax whatsoever that may be due the District: *Provided further,* That at any time after any property shall have been bid off as aforesaid by the collector of taxes, and before the expiration of the time allowed for the redemption thereof, the collector of taxes of said District, may issue to any person or persons, upon the payment of a sum not less than the aggregate amount of the taxes, penalties, and costs due at the time the property was bid off by the collector and that may have accrued after that date, a certificate of sale, and if the property shall not be redeemed by the owner or owners thereof within two years from the date of such certificate, by payment to the collector of taxes of said District, for the use of the legal holder of the certificate, the amount exclusive of surplus paid by the person or persons to whom such certificate was issued and one per centum thereon for each month or part thereof, a deed shall be given by the Commissioners of the District of Columbia, or their successors in office, to the legal holder of such certificate, which deed shall have the same force and effect as the deed hereinbefore provided for in this section for property sold at the regular annual sale; and that the foregoing provisions in this section in reference to the sale at public or private sale of property in the District of Columbia advertised for sale for taxes and bid off by the collector of taxes be, and the same are also hereby, made applicable to all property in the District of Columbia subject to taxation where taxes levied and in arrears on July 1, 1897, or at any time prior thereto, have not been paid, and which at any sale held previous to said date were bid off in the name of the District of Columbia; and when for any reason any tax sale of real property in the District of Columbia may be set aside or canceled, such property may be readvertised and sold at the next ensuing annual sale. (Feb. 28, 1898, 30 Stat. 250, ch. 32, § 3; July 1, 1902, 32 Stat. 633, ch. 1358, § 1(3); June 25, 1938, 52 Stat. 1201, ch. 702, § 9; Feb. 22, 1944, 58 Stat. 20, ch. 29; June 11, 1960, 74 Stat. 203, Pub. L. 86–507, § 1(52).)

AMENDMENTS

1960—Act June 11, 1960, inserted words "or by certified mail" following "registered mail."

1944—Act Feb. 22, 1944, added the first proviso.

1938—Act June 25, 1938, substituted "one per cent thereon for each month or part thereof" for "twelve per centum per annum" in two instances and for "eight per centum per annum."

1902—Act July 1, 1902, added the first sentence and the part of the section following the words "Provided further," and lowered the first percentage provision from 15% per annum to 12% per annum and the second percentage provision from 10% per annum to 8% per annum, and provided the third percentage provision should be 12% per annum.

CROSS REFERENCES

Certified mail receipts as prima facie evidence of delivery, see § 14–506.

Enforcement of liens on real estate for unpaid taxes, see, also, §§ 47–1011 to 47–1014.

NOTES TO DECISIONS

Conveyance for lesser amount

Under this section and §§ 47–1001 and 47–1002 providing for public sale of delinquent tax property, the commissioners had no authority to convey property for less than all assessments, taxes, costs, penalties, and charges due the District of Columbia. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation* (1943, 134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

Where, under this section, commissioners had no authority to convey property for less than all assessments, taxes, costs, penalties, and charges due District of Columbia, the purpose of former section 800 of Title 20 of the 1929 D. C. Code creating such authority and a method for selling the property was, not to repeal this section, but rather to provide for disposition on terms not permissible prior thereto with safeguard of judicial approval when the sale should be made on the new terms. *Id.*

Protection of interests

Where interests under wills had apparently been extinguished by valid tax title to stranger before trustee under will acquired tax title in individual name, burden was on the trustee, not upon the commissioners, to act for protection of the beneficial interests, and the commissioners did not have burden of searching out the interests under the wills and making a decision regarding their validity. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation* (1943, 134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

Redemption

Neither conservator nor his ward must wait for removal of legal disability to redeem property from tax sale, and conservator may not be denied right to redeem in proper case because he is conservator under District of Columbia statutes. *Shenandoah Corp.* v. *E. F. Jackson* (1962, 298 F. 2d 324, 111 U.S. App. D.C. 410).

Where the "date of redemption" column in assessor's tax record was used for both genuine redemptions within

statutory period and payments made on issue of tax deed, tax deed was not objectionable on ground that sale made in January, 1932, stood redeemed on March 10, 1934, on tax records where evidence established that amounts entered in the "date of redemption column" were amounts paid by purchaser in return for tax deed. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation* (1943, 134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

Tax deed

Under District of Columbia statute, if owner of property does not redeem it within two years of tax sale, purchaser of tax sale certificate at such sale may, within next three years, obtain tax deed to property by paying all taxes and charges then due and owing, but if property is subject of another tax sale resulting in issuance of tax deed, tax deed expunges all other interests in property and vests in holder new and complete title to property in fee simple. *Gray Properties, Inc.* v. *Tobriner* (1966, 357 F. 2d 829, 123 U.S. App. D.C. 150).

The provision in the Code that the District's tax deed shall be prima facie evidence of a good and perfect title in fee simple is not to be interpreted as indicating a Congressional intent that a junior District lien shall be superior to a senior federal lien. *Cobb* v. *United States* (1949, 172 F. 2d 277, 84 U. S. App. D. C. 228).

Tax title

A tax deed after sale for District of Columbia taxes to a lot over which lay an easement of passageway created by deed and appurtenant to another lot did not extinguish the easement. *Engel* v. *Catucci* (1952, 197 F. 2d 597, 91 U.S. App. D.C. 54).

Title evidenced by a tax deed given in compliance with statutory requirements expunges all interests which spring from record title and vests in the holder a new and complete title to the property in fee simple. *W. C. & A. N. Miller Development Co.* v. *Emig Properties Corporation* (1943, 134 F. 2d 36, 77 U. S. App. D. C. 205, certiorari denied 63 S. Ct. 983, 318 U. S. 788, 87 L. Ed. 1155).

No right of dower passed by the tax deed involved. If the deed had any effect at all it was to expunge the inchoate dower right. *Cobb* v. *Shore* (1950, 183 F. 2d 980, 87 U. S. App. D. C. 162).

§ 47–1004. Changed interest rates to apply only to sales after June 25, 1938.

The amendments of section 47–1003 by act June 25, 1938, shall apply only to tax sales held after June 25, 1938, and section 47–1003, without said amendments, shall remain in full force and effect as to all tax sales held prior to June 25, 1938. (June 25, 1938, 52 Stat. 1201, ch. 702, § 9 (d).)

§ 47–1005. Property sold for taxes redeemable within 2 years from sale.

The owner of any property sold as aforesaid, or any other person having an interest therein at the time of redemption, may redeem the same from such sale at any time within two years after the last day of sale by paying to the collector of taxes, for the use of the purchaser, his heirs and assigns, the sum mentioned in the certificate of sale therefor, exclusive of surplus with interest thereon at the rate of twelve per centum per annum after the date of such certificate of sale. (Feb. 28, 1898, 30 Stat. 250, ch. 32, § 4; July 1, 1902, 32 Stat. 635, ch. 1358, § 1(4).)

AMENDMENT

1902—Act July 1, 1902, added the words "exclusive of surplus," reduced the percentage provision from 15% per annum to 12% per annum, and deleted the following words following the present last word: "Together with any tax or assessment which the holder of said certificate shall have paid between the days of sale and redemption, with interest on the same at the rate of ten per centum per annum," and the words "or authorized agent of the owner" following the word "owner" the first time it is used.

NOTES TO DECISIONS

In general

The Code provides for the sale of the real property subject to taxation on which said taxes are unpaid after the notice of sale and delinquent tax list shall have been advertised as required under the statute, and the redemption of the property so sold within two years. *Tumulty* v. *District of Columbia* (1939, 102 F. 2d 254, 69 App. D. C. 390).

The statute supplies remedial procedure by which to obtain necessary information where there has been a refusal to file return as requested by law. *Id.*

§ 47–1006. Report of tax sale to be filed with recorder of deeds—Disposition of surplus on redemption.

The collector of taxes shall, within twenty days, exclusive of Sundays and legal holidays, after the last day of the sale hereinbefore provided for as aforesaid, file with the recorder of deeds a written report, in which he shall give a statement of the property sold, other than that sold to the District of Columbia, to whom it was assessed, the taxes due, to whom sold, the amount paid, the date of sale, the cost thereof, and the surplus, if any. Any surplus remaining after the collection of taxes, penalties, and costs on any real estate shall be collected as hereinbefore provided for, and shall be deposited by the collector of taxes to the credit of the surplus fund, to be paid to the owner or owners, or their legal representatives, in the same manner as other payments made by the District: *Provided,* That if any property sold for taxes, as herein provided, is redeemed from such sale within two years from last day of sale, any surplus paid at time of sale shall be paid by the District of Columbia to the legal holder of certificate of sale. (Feb. 28, 1898, 30 Stat. 252, ch. 32, § 5; July 1, 1902, 32 Stat. 635, ch. 1358, § 1(5).)

AMENDMENT

1902—Act July 1, 1902, added the words, "exclusive of Sundays and legal holidays," and the proviso; deleted the words "in sections one hundred and sixty-one and one hundred and sixty-two, chapter six, of the Revised Statutes of the United States, relating to the District of Columbia" and inserted in lieu thereof the words "as hereinbefore provided for."

§ 47–1007. Commissioners not to convey any property if sale is void.

The said commissioners shall not convey any property sold for taxes if they shall discover, before the conveyance, that the sale was for any cause invalid and ineffectual to give title to the property sold; but they shall cancel the sale and cause the purchase money, together with interest at the rate of six per centum per annum, and the surplus, if any, to be refunded to the purchaser, his representatives or assigns: *Provided,* That if any conveyance made by the said commissioners, of property sold for taxes, shall at any time be set aside by decree of any court as invalid, the party in whose favor the decree is rendered shall pay to the party holding such conveyance, his heirs or assigns, the amount paid for such taxes and conveyances, together with interest at the rate of six per centum per annum. (Feb. 28, 1898, 30 Stat. 252, ch. 32, § 6; July 1, 1902, 32 Stat. 635, ch. 1358, § 1(6).)

AMENDMENT

1902—Act July 1, 1902, added the words, "together with interest at the rate of six per centum per annum, and the surplus, if any" and the proviso.

NOTES TO DECISIONS

Limitations

Statute limits reimbursement by the District of Columbia to those instances where the Commissioners "discover, before the conveyance, that the sale was for any cause invalid and ineffectual to give title to the property sold." *Cobb* v. *Shore* (1950, 183 F. 2d 980, 87 U. S. App. D. C. 162).

§ 47–1008. Payment of expenses of advertising.

The expenses of advertising shall be paid by a charge of fifty cents for each lot or piece of property advertised. (Feb. 28, 1898, 30 Stat. 252, ch. 32, § 7; July 1, 1902, 32 Stat. 635, ch. 1358, § 1(7); May 21, 1928, 45 Stat. 650, ch. 659.)

AMENDMENTS

1928—Act May 21, 1928, deleted the words "and the printing of said pamphlet" following the word "advertising."

1902—Act July 1, 1902, reduced the charge from one dollar and twenty cents to fifty cents.

CHARGE FOR PROPERTY ADVERTISED

The District of Columbia Appropriations Act of Aug. 6, 1958, Pub. Law 85–594, § 1, authorized the Commissioners to fix annually a charge "for each lot or piece of property advertised." Pursuant to this authority the commissioners issued the following order:

October 28, 1958. Order No. 58–1831.

Ordered: That, pursuant to and under authority of Public Law 85–594, 85th Congress (General Administration), approved August 6, 1958, making appropriations for the Government of the District of Columbia for the fiscal year ending June 30, 1959, and for other purposes, a charge of one dollar and thirty cents ($1.30) is hereby fixed for advertising for sale each lot or piece of property on which taxes were in arrears on July 1, 1958, also for all unpaid water charges, sanitary sewer service charges, and special assessments subject to sale, such tax sale to be made in accordance with Commissioners' Order No. 58–1837, dated November 4, 1958.

§ 47–1009. Assessor to furnish information.

The assessor of the District of Columbia shall furnish information with respect to taxes, special assessments, and valuations to any person having any interest in the property with respect to which such information is requested. (Feb. 28, 1898, 30 Stat. 252, ch. 32, § 8; July 1, 1902, 32 Stat. 635, ch. 1358, § 1(8); June 25, 1938, 52 Stat. 1201, ch. 702, § 8.)

AMENDMENTS

1938—Act June 25, 1938, amended section generally. Prior to such amendment, section read as follows: "The assessor of the District of Columbia shall have the records of his office open to inspection of the public, free of charge at such time or times as the public interest will permit."

1902—Act July 1, 1902, eliminated provisions which authorized delivery of a copy of a pamphlet listing the property on which taxes are in arrears.

§ 47–1010. Assessor to keep list of property sold for taxes for public inspection.

It shall be the duty of the assessor for the District of Columbia to prepare and keep in his office, for public inspection, a list of all real estate in the District of Columbia heretofore sold, or which may hereafter be sold, for the nonpayment of any general or special tax or assessment levied or assessed upon the same, said list to show the date of sale and for what taxes sold; in whose name assessed at the time of sale; the amount for which the same was sold; when and to whom conveyed if deeded, or, if redeemed from said sale, the date of redemption. (Feb. 6, 1879, 20 Stat. 283, ch. 50; May 13, 1892, 27 Stat. 37, ch. 74; Mar. 3, 1917, 39 Stat. 1005, ch. 160; June 25, 1938, 52 Stat. 1202, ch. 702, § 11.)

CODIFICATION

The duties set forth in this section were created and placed upon the collector of taxes by act Feb. 6, 1879.

Act May 13, 1892, transferred them to the assessor.

Act Mar. 3, 1917, transferred these duties back to the collector by the following words quoted therefrom: "and the collector of taxes shall hereafter be charged with the duties heretofore required of the assessor in relation to * * * the preparation for public inspection of lists of all real estate in the District of Columbia heretofore sold, or which may hereafter be sold, for the nonpayment of any general or special tax or assessment."

Act June 25, 1938, transferred these duties back to the assessor. See § 47–603.

§ 47–1011. Liens on real estate for unpaid taxes—Enforcement—Redemption before sale.

Whenever any real estate in the District of Columbia has been, or shall hereafter be, offered for sale for nonpayment of taxes or assessments of any kind whatsoever, and shall have been bid off in the name of the District of Columbia, and more than two years shall have elapsed since such property was bid off as aforesaid and the same has not been redeemed as provided by law, the Commissioners of said District may, in the name of the District aforesaid, petition the United States District Court for the District of Columbia, sitting in equity, to enforce the lien of said District for taxes or other assessments on the aforesaid property by decreeing a sale thereof; and up to the time of the sale hereinafter provided for such property may be redeemed by the owner or other person having an interest therein by the payment of all taxes or assessments due the District of Columbia upon said property and all legal penalties and costs thereon, together with such other expenses as may have been incurred by said District prior to, and as a result of, the filing of the action herein provided for. (Mar. 2, 1936, 49 Stat. 1153, ch. 111, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

NOTES TO DECISIONS

Land subject to easements

Sale of real property for non-payment of taxes does not extinguish an easement with which the property is burdened. *District of Columbia* v. *Capital Mortg. & Title Co.* (D.C.D.C. 1949, 84 F. Supp. 788).

Tax lien

Tax liens and sales of the District are governed by Title 47, and since no reference is made in the statute to a lien for taxes except in connection with taxes in arrears, it is a reasonable interpretation that the lien does not arise prior to the occurrence of a delinquency. *Cobb* v. *United States* (1949, 172 F. 2d 277, 84 U. S. App. D. C. 228).

§ 47–1012. Real estate to be sold—Notice to owner—Parties defendant—Court order—Validity of service and sale.

Before any such action shall be instituted, the aforesaid Commissioners shall cause notice to be given in the name appearing upon the records of the assessor as the owner of such property, by registered mail or by certified mail directed to the last known address of such person, and by publication once a week for three successive weeks in some daily newspaper published and circulated generally in the District of Columbia, against said person and "all other persons having or claiming to have any right, title, or interest in or to the real estate proposed to be proceeded against, their heirs, devisees, executors, administrators, and assigns," by such designation, to appear before them on a day certain, which day shall be at least ten days after the last publication of said notice, and show cause, if any they have, why the said real estate should not be proceeded against. For the purpose of the proceedings herein provided for, the person appearing by the assessor's records, at the time of the first publication of notice, as the owner of such property, and any other persons who may appear in response to the publication aforesaid and claim to have an interest in such property, shall be deemed proper parties defendant in any such proceedings. Upon the filing of the petition aforesaid, the court shall enter an order directed to the person or persons named as defendants therein and "to all other persons having or claiming to have any right, title, or interest in the real estate proposed to be sold, their heirs, devisees, executors, administrators, and assigns," by such designation, directing them to appear on a day certain, which day shall be not less than thirty days after the date of the last publication of said order, and show cause, if any they have, why said real estate should not be proceeded against and sold. The said order shall be published once a week for three successive weeks in some daily newspaper published and circulated generally in the District of Columbia, and such publication shall be considered as sufficient service upon such person or persons as cannot be found by the marshal within the District of Columbia or who are nonresident or unknown, their heirs, devisees, executors, administrators, and assigns; and the proceedings or sale of such real estate shall not be rendered invalid if the true owner or owners or any other person or persons having any right, title, or interest in said real estate shall not be included as a party to the suit, if it shall appear that the publication herein provided for shall have been duly made. (Mar. 2, 1936, 49 Stat. 1154, ch. 111, § 2; June 11, 1960, 74 Stat. 203, Pub. L. 86–507, § 1(53).)

AMENDMENT

1960—Act June 11, 1960, inserted words "or by certified mail" following "registered mail."

CROSS REFERENCE

Certified mail receipts as prima facie evidence of delivery, see § 14–506.

§ 47–1013. Court to decree sale by collector of taxes—No penalty if defect in tax sale.

Upon proof in said suit of the failure of the owner of any such property to redeem the same as provided by law, the court shall, without unreasonable delay, decree a sale of the property to satisfy the lien of the District of Columbia for taxes, assessments, penalties, interest, and costs, and any other costs or expenses that have been incurred by said District prior to or after the institution of suit and in connection therewith, which said costs shall include court costs, but in no such case shall there be any allowance by the court of a docket fee, attorney's fee, or trustee's commission. All such sales shall be conducted by the collector of taxes or his deputy, by public auction either in the office of said collector or in front of the premises to be sold, as the court may determine, after advertisement for ten consecutive days in some daily newspaper published and circulated generally in the District of Columbia: *Provided,* That if it shall appear that there were any substantial defects in any tax sale no part of the penalties and charges incidental to such sales shall be collectible; but nothing herein contained shall in any wise affect any cost incurred by the District of Columbia in the institution and prosecution of the suit. (Mar. 2, 1936, 49 Stat. 1154, ch. 111, § 3.)

§ 47–1014. Real estate sold—Confirmation of sale—Surplus paid into court—Delivery of deed.

Every such sale shall be reported to and confirmed by said equity court, and no sale shall be made for an amount less than such aggregate taxes, interest, and costs incurred in the institution of suit, including advertising and sale, unless by express order of the court. Any surplus remaining from sales made under sections 47–1011 to 47–1014 shall be paid by the collector of taxes into the registry of the court, to abide its further order for payment to the person or persons entitled thereto; and any such moneys remaining unclaimed for a period of five years after confirmation of any such sale shall be paid into the Treasury of the United States and credited to the revenues of the District of Columbia. Upon confirmation of such sale by order of court and payment of the purchase price, and upon full compliance with all of the terms of sale, the clerk of the court shall execute and deliver to the purchaser a deed to the property so sold, which deed shall convey to said purchaser all of the right, title, and estate of all persons whether named in such suit or not. (Mar. 2, 1936, 49 Stat. 1155, ch. 111, § 4.)

NOTES TO DECISIONS

In general

If proceedings on which tax sale is predicated substantially comply with the statutory directions, courts should not be astute to search for technical grounds on which to set aside the conveyance. *Deming* v. *Turner* (D.C.D.C. 1946, 63 F. Supp. 220).

§ 47–1015. Validity of sales not affected by certain errors in computation.

No sale of any real property for taxes shall be impaired or made void by reason of any error of the proper officers in making a computation of the amount of taxes due, the expenses attendant on the advertisement and sale, or of the purchase-money and the interest thereon, notwithstanding the sum erroneously computed may have been paid by the purchaser, his heirs or assigns; but all such sales and the deeds which may be granted on the certifi-

cates then issued shall be valid and binding as if no such error had been made. (R. S., D. C., § 173.)

CROSS REFERENCE

Family dwellings occupied by the owner, see § 47–904.

REFUND OF TAXES

§ 47–1016. Taxes erroneously paid to be refunded.

The commissioners are hereby authorized and instructed to cause all taxes erroneously paid in the District of Columbia to be refunded by the proper accounting and disbursing officers of said District, upon the certificate of the collector of such erroneous payment, which certificate shall state the nature of the error, the name of the person or persons by whom such excessive payment was made, and such other particulars as may be necessary to satisfy the accounting officers that such claim for reimbursement is just and equitable; and the said accounting and disbursing officers shall pay all moneys so refunded out of, and charge the same to, the fund which was credited with the erroneous payment. (Leg. Assem., Jan. 19, 1872, ch. 31, § 1, p. 52; June 20, 1874, 18 Stat. 116, ch. 337, § 2.)

CODIFICATION

Act June 20, 1874, vested power in the Commissioners.

CROSS REFERENCES

Cancellation of street assessments, see § 7–632.

Commissioners may grant refund of taxes and assessments where like assessments against similar property have been held void or erroneous by the courts, see § 1–903.

Reassessment when tax declared void, see §§ 7–632, 47–721, 47–1106.

Refund of

- Business license fees and taxes, see § 47–2350.
- Income taxes, see §§ 47–1534, 47–1586j.
- Motor vehicle fuel taxes, see § 47–1910.
- Overpaid assessments for laying water mains and sewers, see § 43–1518.
- Unemployment compensation contributions, see § 46–304.

Refund on appeal, see § 47–2407.

Waiver of interest or penalties upon unpaid taxes, see § 47–307.

Water rents erroneously paid refunded in the same manner as erroneously paid taxes, see § 43–1519.

§ 47–1017. Money paid for license not granted to be refunded.

Whenever any person shall deposit money with the collector for the purpose of procuring a license, and said license shall have been subsequently refused by legal authority, it shall be the duty of the collector to refund the money so deposited, deducting therefrom an amount justly proportionate to the time during which such license shall have been used by the applicant therefor, or his representatives, and charge the amount so refunded to the fund which was credited with the original deposit. (Leg. Assem., Jan. 19, 1872, ch. 31, § 2.)

CROSS REFERENCES

No refund of fees under Alcoholic Beverage Control Act when license is suspended or revoked for violations of the act or regulations promulgated thereunder, see § 25–118.

Refund of fees

- Erroneously or mistakenly paid by life insurance companies, see § 35–403.
- Erroneously paid under Real Estate and Business Brokers' License Act, see § 45–1403.
- For building permits, see § 5–430.
- Under Real Estate and Business Brokers' License Act, see § 45–1405.

§ 47–1018. Disposition of money paid for redemption of property sold for taxes.

All moneys paid or deposited according to law, for the redemption of property sold for taxes, shall be paid by the accounting and disbursing officers of the District to the person or persons entitled to receive it, on the presentation of the certificate of the collector. (Leg. Assem., Jan. 19, 1872, ch. 31, § 4.)

Chapter 11.—SPECIAL ASSESSMENTS

Sec.

47–1101. Protest against special assessment—Hearing—Report and exceptions—Decision.
47–1102. Abatement, reduction, or adjustment of special assessment.
47–1103. Notice of levying of special assessment—Publication—Payment of special assessment—Interest.
47–1104. Payment of special assessment after ratification—Sale for nonpayment.
47–1105. Assessment for removal of nuisance—Sale for nonpayment.
47–1106. Reassessment where special assessment set aside—Hearing—Agent's report to Commissioners.
47–1107. Improvements of streets about the Capitol—Assessments by Secretary of the Interior.

§ 47–1101. Protest against special assessment—Hearing—Report and exceptions—Decision.

Any property owner aggrieved by any special assessment levied by the District of Columbia for any public improvement, other than a special assessment levied by a jury in a condemnation proceeding, may, within sixty days after service of notice of such assessment as provided in section 47–1103, file with the Commissioners of the District of Columbia a protest in writing against such assessment setting forth specifically the grounds of such protest and may request a hearing thereon. No ground of protest not specifically set forth need be considered by the Commissioners. If a hearing is requested the same shall be held, in the discretion of the Commissioners, either before them or before one or more agents designated by them. At such hearing, physical facts which may be ascertained by view may be considered whether proved or not. If the hearing is held before an agent or agents, such agent or agents shall report in writing to the Commissioners the substance of the evidence taken and the arguments made at the hearing, together with the findings (which may include a statement of any physical facts not proved at the hearing but which may be ascertained by view) and the recommendations of such agent or agents. A copy of such report, findings, and recommendations shall be mailed to the protestant ten days before being presented to the Commissioners, and the protestant may, before such report, findings, and recommendations are presented to the Commissioners, file with such agent or agents exceptions to such report and findings, which exceptions shall be presented to the Commissioners with such report, findings, and recommendations. If the Commissioners find that the property of the owner so protesting is not benefited by the improvement for which said assessment is levied, or is benefited less than the amount of such assessment or is unequally or inequitably assessed with relation to other property abutting such improvement, said commissioners shall abate, reduce, or adjust such

assessment in accordance with such findings. In computing the time hereinafter provided in which a special assessment may be paid without interest there shall be excluded therefrom the time between the date of the filing of any such protest and the date of mailing notice of the action thereon by the Commissioners. This section shall be effective only as to assessments levied for work completed subsequent to the passage and approval of sections 47–1101 to 47–1106. (June 25, 1938, 52 Stat. 1198, ch. 702, § 1.)

TRANSFER OF FUNCTIONS

All functions of the Committee on Special Assessment Appeals including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. Reorganization Order No. 20 dated Nov. 10, 1952, established a Committee on Special Assessment Appeals made up of an Assistant Corporation Counsel, the Assessor, and the Collector of Taxes to act as agents of the Commissioners as prescribed in this section. The order abolished the previously existing Committee on Special Assessment Appeals. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCES

Assessment of damages and benefits in condemnation proceedings to obtain land for alleys and minor streets, see §§ 7–314 to 7–321, 7–324.

Assessment of damages and benefits in condemnation proceedings to obtain land for streets, see §§ 7–201, 7–207 to 7–212.

Assessments for street, sidewalk, and sewer construction and repair, water connections, permit plan, see §§ 7–606, 7–608, 7–610 to 7–612, 7–622 to 7–634.

Assessments in improving streets around Capitol, see § 47–1107.

Disposition of assessments for work done on the permit plan, see § 47–126.

Payment of special assessments upon recording of plats, see §§ 47–713, 47–714.

Property exempted from assessments for improvements, see § 47–803.

Redistribution of assessments, see § 47–715 et seq.

Special assessments for laying water mains and sewers, see § 43–1510 et seq.

Special assessments in condemnation proceedings to close alleys or streets under Street Adjustment Act, see § 7–406.

Special provisions concerning payment of assessments on family dwellings, see §§ 47–901 to 47–906.

Time for payment, delinquency, see § 47–1209.

NOTES TO DECISIONS

Front-foot rule

Assessment under front-foot rule was invalid. *Johnson* v. *Rudolph* (1927, 16 F. 2d 525, 57 App. D. C. 29). See, also, *Dougherty* v. *American Secur. & Trust Co.* (1930, 40 F. 2d 813, 59 App. D. C. 301, certiorari denied 51 S. Ct. 31, 282 U. S. 854, 75 L. Ed. 757); *Taliaferro* v. *Railway Terminal Warehouse Co.* (1930, 43 F. 2d 271, 59 App. D. C. 376).

In applying this general law as to front-foot rule, which extends throughout the District, to a special assessment for street improvement not exclusively benefiting adjacent property-owners, the assessment cannot be upheld if it is in excess of the benefits and is not equal and fair in view of existing physical conditions, as where there is no relative equality in the value and depth of the abutting properties. *Johnson* v. *Rudolph* (1927, 16 F. 2d 525, 57 App. D. C. 29).

In applying the front-foot rule, the size, shape, improvements, or favorable location of property is not the test in determining validity of an assessment, but rather the relation of the property to other properties facing on the avenue and in the immediate vicinity. *Taliaferro* v. *Railway Terminal Warehouse Co.* (1930, 43 F. 2d 271, 59 App. D. C. 376).

A road improvement assessment under the front-foot rule was canceled as inequitable as applied to a triangular-shaped lot. *Id.*

Jurisdiction of municipal court

Municipal Court for District of Columbia, under its equity powers, lacked jurisdiction to entertain cause of action by property owners to cancel special assessment by District for certain paving improvements to sidewalks and alley. *J. F. Paton and M. S. Paton* v. *District of Columbia* (D.C. Mun. App. 1962, 180 A. 2d 844).

Paving and improving streets

A different rule prevails as to assessments for paving and improving streets than that which applies for laying water mains in the District, and the legislature may create taxing districts to meet the expense of local improvements and may fix the basis of taxation without encountering the Fourteenth Amendment unless its action is palpably arbitrary or a plain abuse. *Johnson* v. *Rudolph* (1927, 16 F. 2d 525, 57 App. D.C. 29).

Revision of assessments

The front-foot rule cannot be applied to the assessment of a lot for paving an alley, which had a boundary of 233.17 feet facing two alleys, which could not be used commercially, and when the lot is assessed 222 percent higher than average assessment of other lots bordering the alleys, the assessment must be revised. *Willner* v. *Hazen* (1940, 111 F. 2d 511, 71 App. D. C. 373).

One seeking to cancel an alley-paving assessment on a lot, facing two alleys, which, under zoning regulations was limited to one-family detached house, and which was assessed 222 percent higher than other lots, was entitled to trial on the merits, and dismissal of complaint was improperly granted. *Id.*

§ 47–1102. Abatement, reduction, or adjustment of special assessment.

The Commissioners of the District of Columbia are authorized, but not directed, whenever in their judgment and discretion any property upon which a special assessment has been levied by the District of Columbia is not benefited by the improvement for which such special assessment was levied, or is benefited less than the amount of such assessment, or is unequally or inequitably assessed with relation to other property abutting such improvement, to abate, reduce, or adjust such assessment in accordance with such finding. This section shall not apply to any assessment levied by a jury in a condemnation proceeding, or to any assessment levied for work completed subsequent to June 25, 1938 or to any assessment levied under sections 7–622 to 7–634: *Provided, however,* That nothing in this section shall be construed as affecting protests filed under the provisions of sections 7–622 to 7–634 within the time prescribed in said sections. (June 25, 1938, 52 Stat. 1199, ch. 702, § 2.)

§ 47–1103. Notice of levying of special assessment—Publication—Payment of special assessment—Interest.

(a)(1) When any special assessment for a public improvement, with the exception of assessments levied in condemnation proceedings, is levied by the District of Columbia upon any lot or parcel of land, notice of the levying of such assessment shall be served upon the record owner thereof in the manner herein provided, and if there be more than one record owner of such lot or parcel of land notice served on one of the owners shall be sufficient. Such notice shall be deemed to have been served when served by any of the following methods: (a) when forwarded to the last known address of the owner as recorded in the real estate assessment

records of the District of Columbia by registered or certified mail, with return receipt, and such receipt shall constitute prima facie evidence of service upon such owner if such receipt is signed either by the owner or by a person of suitable age and discretion located at such address: *Provided,* That valid service upon the owner shall be deemed effected under this clause (a) if such notice shall be refused by the owner and not delivered for that reason; or (b) when delivered to the person to be notified; or (c) when left at the usual residence or place of business of the person to be notified with a person of suitable age and discretion then resident or employed therein; or (d) if no such residence or place of business can be found in the District of Columbia by diligent search, then if left with any person of suitable age and discretion employed at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; or (e) if any such notice forwarded by registered or certified mail be returned for reasons other than refusal, or if personal service of such notice cannot be effected, then if published on three consecutive days in a daily newspaper published in the District of Columbia; or (f) if by reason of an outstanding unrecorded transfer of title the name of the owner cannot, by diligent search, be ascertained, then if served on the owner of a record in a manner hereinbefore provided. Any notice to a corporation shall, for the purposes of sections 47–1101 to 47–1106, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in a manner hereinbefore provided for the service of notices on natural persons holding property in their own right; and notices to a foreign corporation shall, for the purposes of sections 47–1101 to 47–1106, be deemed to have been served if served personally on any agent of such corporation, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia. The cost of publication, if any, shall be paid out of the general revenues of the District. The notice herein provided for shall be in lieu of any and all other notice now required by law.

(2) In case such notice is served by any method other than personal service, a copy of such notice shall also be sent to the owner by ordinary mail.

(b) All special assessments authorized to be levied by the District of Columbia for public improvements, with the exception of assessments levied in condemnation proceedings, may be paid without interest within sixty days from the date of service of notice or of the last publication of notice as the case may be. Interest of one-half of 1 per centum for each month or part thereof shall be charged on all unpaid amounts from the expiration of sixty days from the date of service or last publication as the case may be. Any such assessment may be paid in three equal installments with interest thereon. If any such assessment or any part thereof shall remain unpaid after the expiration of two years from date of service of notice or last publication of notice as the case may be, the property against which said assessment was levied may be sold for such assessment or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if said assessment with interest and penalties thereon shall not have been paid in full prior to said sale.

This subsection shall apply only to assessments for public improvements completed subsequent to June 25, 1938, and assessments for public improvements completed on or before June 25, 1938 shall be levied and collected and bear interest as if sections 47–1101 to 47–1106 had not been passed, except that where service sewers or water mains, or both, have been laid prior to June 25, 1938, but assessments therefor have not been levied for the reason that the property abutting the street, avenue, road, or alley in which the service sewer or water main is laid has not been subdivided, assessments for such sewers or water mains, or both, levied after June 25, 1938, because of the subdivision of the property or its connection with the sewer or water main or both, shall be levied, collected, and bear interest as provided in this subsection. (June 25, 1938, 52 Stat. 1199, ch. 702, § 3; June 17, 1959, 73 Stat. 75, Pub. L. 86–46, §§ 1, 3.)

AMENDMENT

1959—Subsec. (a) amended generally by act June 17, 1959. Prior to such amendment by section 1 of act June 17, 1959, the first paragraph of subsection (a) read as follows: "When any special assessment for a public improvement, with the exception of assessments levied in condemnation proceedings, is levied by the District of Columbia upon any lot or parcel of land, notice of the levying of such assessment shall be served upon the record owner thereof in the manner herein provided and if there be more than one record owner of such lot or parcel of land notice served on one of the owners shall be sufficient. If the address of the owner be unknown or if the owner be a non-resident, such notice shall be served on his tenant or agent. The service of such notice shall be either personal or by leaving the same with some person of suitable age at the residence or place of business of such owner, agent, or tenant. If there be no tenant or agent known to the Commissioners, then they shall give notice of such assessment by advertisement once a week for two successive weeks in some daily newspaper of general circulation published in the District of Columbia. The cost of such publication shall be paid out of the general revenues of the District. The notice herein provided for shall be in lieu of any and all other notice now required by law." Section 3 of act June 17, 1959 repealed the second paragraph of subsection (a) of this section which made the subsection applicable to all assessments (other than assessments in condemnation proceedings) notice of which had not been served prior to June 25, 1938.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 2 of act June 17, 1959, provided that: "The amendments made by the first section of this Act [to subsec. (a) of this section] shall apply to all special assessments for public improvements (other than assessments in condemnation proceedings) notice of which has not been served prior to the approval of this Act [June 17, 1959]."

§ 47–1104. Payment of special assessment after ratification—Sale for nonpayment.

Special assessments authorized to be levied in condemnation proceedings instituted by the District of Columbia may be paid without interest within sixty days after the ratification or confirmation of the verdict of the jury. Interest of one-third of 1 per centum for each month or part thereof shall be

charged on all unpaid amounts from the expiration of sixty days from the date of the ratification or confirmation of the verdict of the jury. Any such assessment may be paid in five equal installments with interest thereon. If any such assessment or any part thereof shall remain unpaid after the expiration of four years from the date of the ratification or confirmation of the verdict of the jury the property against which said assessment was levied may be sold for such assessment or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if said assessment with interest and penalties thereon shall not have been paid in full prior to said sale. This section shall apply only to assessments ratified or confirmed by the court after June 25, 1938 and assessments ratified or confirmed on or before June 25, 1938 shall be levied and collected and bear interest as if sections 47–1101 to 47–1106 had not been passed. (June 25, 1938, 52 Stat. 1200, ch. 702, § 4.)

§ 47–1105. Assessment for removal of nuisance—Sale for nonpayment.

All assessments authorized to be levied by the District of Columbia to reimburse it for money expended in the removal of nuisances shall bear interest at the rate of one-half of 1 per centum per month or part thereof from the date such assessment was levied. If any such assessment shall remain unpaid after the expiration of sixty days from the date such assessment was levied the property against which such assessment was levied may be sold for such assessment with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if such assessment with interest and penalties thereon shall not have been paid in full prior to said sale. (June 25, 1938, 52 Stat. 1200, ch. 702, § 5.)

§ 47–1106. Reassessment where special assessment set aside—Hearing—Agent's report to Commissioners.

The commissioners of the District of Columbia are hereby authorized and directed, in any case where a special assessment for public improvements in the District of Columbia, other than an assessment levied by a jury in a condemnation proceeding, has been or hereafter may be quashed, set aside, or declared void by any court for any reason other than the right of the public authorities to levy an assessment for such improvement, to reassess the property in accordance with the benefits received from such improvement, after notice to the owner of the property and an opportunity afforded him to be heard, the hearing to be had before such agent or agents as the commissioners may designate. At such hearing physical facts which may be ascertained by view may be considered, whether proved or not. Such agent or agents shall report in writing to the commissioners the substance of the evidence taken and the arguments made at the hearing, together with the findings (which may include a statement of any physical facts not proved at the hearing which may be ascertained by view) and the recommendations of such agent or agents. A copy of such report, findings, and recommendations shall be mailed to the protestant ten days before being presented to the commissioners, and the protestant may, before such report, findings, and recommendations are presented to the commissioners, file with such agent or agents exceptions to such report and findings, which exceptions shall be presented to the commissioners with such report, findings, and recommendations. The reassessment shall be made within one year from the date the judgment or decree quashing, setting aside, or declaring void the assessment becomes final and not subject to review. Notice of such reassessment shall be given the property-owner in the same manner as if such reassessment was an original assessment, and such reassessment shall bear interest and be collected in the same manner as if such reassessment was an original assessment. (June 25, 1938, 52 Stat. 1201, ch. 702, § 6.)

TRANSFER OF FUNCTIONS

All functions of the Committee on Special Assessment Appeals including the functions of all officers, employees and subordinate agencies were transferred to the Director of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. Reorganization Order No. 20 of the Board of Commissioners dated Nov. 10, 1952 established a Committee on Special Assessment Appeals made up of an Assistant Corporation Counsel, the Assessor, and the Collector of Taxes to act as agents of the Commissioners as prescribed in this section. The order abolished the previously existing Committee on Special Assessment Appeals including the office of the head thereof. The orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCES

Reassessment where tax or assessment has been declared void, see §§ 7–632, 47–721.

Relevying assessments for laying water mains and sewers, see § 43–1515.

§ 47–1107. Improvements of streets about the Capitol—Assessments by Secretary of the Interior.

In the improvements of streets about the Capitol, the Secretary of the Interior shall assess and collect the cost of all improvements made in front of all private property in the same proportion as charged by the District authorities for the same purpose. (R. S., D. C., § 152.)

Chapter 12.—TAXATION OF PERSONAL PROPERTY

Sec.

47–1201. Three assistant assessors to assess personal property.
47–1202. Personal property to be assessed at full value.
47–1203. Assessor to prepare printed blank forms—Mode of assessment, returns—False affidavit, penalty.
47–1204. Tangible personal property stored in transit.
47–1205. "Resident of the District of Columbia" defined.
47–1206. Returns to be made in July of each year.
47–1207. Rate of taxation—Exceptions.
47–1208. Personal property exempt from taxation.
47–1209. Payment of taxes—To be made semiannually—Mandamus to compel filing sworn return—Expenses.
47–1210, 47–1211. Repealed.
47–1212. Mercantile establishments and carriers by water.
47–1213. Board of Personal Tax Appeals—Constitution—Proceedings.

Sec.
47–1214. Clerk of Board of Personal Tax Appraisers—Appointment.
47–1215. Taxation of rolling stock of railroad, sleeping-car, tank-car, etc., companies—Location within District—Location without District—Applicability of personal property tax laws—Effective date.

§ 47–1201. Three assistant assessors to assess personal property.

The three members of the permanent Board of Assistant Assessors designated by the assessor, to assess personal property, shall under the direction and supervision of the said assessor, assess personal property in the District of Columbia as follows. (July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1; July 3, 1926, 44 Stat. 832, ch. 759, § 1.)

AMENDMENT

1926—Act July 3, 1926, increased the number of assistant assessors from two to three.

TRANSFER OF FUNCTIONS

All functions of the Office of the Assessor and of the Board of Assistant Assessors including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952. Reorganization Order No. 20 dated Nov. 10, 1952, abolished the Office of the Assessor and the Board of Assistant Assessors and transferred their functions to the Finance Office, Department of General Administration. The same order established in the Finance Office an Office of the Assessor headed by an Assessor, and established the Board of Assistant Assessors under the Assessor. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and the plan are set out in the Appendix to Title 1, Administration.

TAXATION OF INTANGIBLE PERSONAL PROPERTY

Act July 26, 1939, 53 Stat. 1107, ch. 367, title IV, § 1, provided: "The tax on intangible personal property imposed by any law relating to the District shall not apply with respect to any year subsequent to the fiscal year ending June 30, 1939."

Title VII of act July 26, 1939, provided that: "The laws authorizing the imposition by the District of Columbia of intangible personal property taxes and business privilege taxes are hereby extended from and after June 30, 1939, for the following purposes in connection with the taxes accrued or due under such laws prior to July 1, 1939—

"(1) For the imposition of assessments and penalties, civil and criminal, for the violation of or failure to comply with such laws and the regulations issued thereunder;

"(2) For requiring the making, filing, and submission of returns and reports required by such laws;

"(3) For the examination of all books, records, and other documents, and witnesses; and

"(4) For the assessment and collection of such taxes, and the filing of liens therefor."

CROSS REFERENCES

Board for assessment of personal property, see § 47–605.
Board of personal-tax appeals, see § 47–1213.
Criminal penalties, see § 47–1303.

NOTES TO DECISIONS

Charge against owner of property

The personal property tax is a definite charge against the owner of the property and the real property tax is a definite charge against the property itself. *Tumulty* v. *District of Columbia* (1939, 102 F. 2d 254, 69 App. D. C. 390).

§ 47–1202. Personal property to be assessed at full value.

All personal property in the District of Columbia subject to taxation shall be listed and assessed at not less than the full and true value thereof in lawful money. (July 3, 1926, 44 Stat. 833, ch. 759, § 4.)

CROSS REFERENCE

Intangible property, see note under § 47–1201.

NOTES TO DECISIONS

Assignment of property

Evidence established that assignments of furniture and personal effects made by owner to an attorney who was to begin litigation for owner, which assignments were absolute in form, were to secure ultimate payments of attorney's fees, and were not a sale to attorney, and for purposes of personal property tax such furniture and personal effects belonged to assignor and attorney had only a lien on property and was not owner. *Pearson* v. *Laughlin* (1951, 190 F. 2d 658, 89 U.S. App. D.C. 130).

Basis of valuation

Where finance officer and taxpayer agreed that cost less depreciation should be basis for assessment of taxpayer's vending machines, but disagreed as to useful lives, District of Columbia Tax Court, on finding that officer's application of standard was incorrect, should have directed that assessment be made on basis of court's finding from evidence of useful life, rather than leaving officer's erroneous assessment standing for lack of proof of actual value. *Pepsi-Cola Bottling Co. of Washington, D.C. Inc.* v. *District of Columbia* (1964, 337 F. 2d 109, 119 U.S. App. D.C. 73).

The assessor cannot be held to any fixed formula or specific catalog of data in determining his proposed personal property assessments and is entitled to base his action on the best information he can procure. *District of Columbia* v. *Morris* (1947, 159 F. 2d 13, 81 U. S. App. D. C. 356).

If valuation of personal property proposed by assessor is correct in dollar amount, as the fair cash value, not less than the full and true value in lawful money, the assessment should be upheld even if the data or method used by him is incomplete or even erroneous, but, if proposed assessment is incorrect in dollar amount, the final assessment must be based on correct value, even though assessor's data and method of computation were correct. *Id.*

Where property consisted of tugs, scows and launches which came into the District on the average of once a day and spent more time out of the District than in it, the District could constitutionally tax tangibles used exclusively in interstate commerce, upon a fair apportionment of value, but could not tax them at full value. *Smoot Sand & Gravel Corp.* v. *District of Columbia* (1949, 174 F. 2d 505, 84 U. S. App. D. C. 367, certiorari denied 69 S. Ct. 1515, 337 U. S. 939, 93 L. Ed. 1744).

Where home furnishings and effects were owned by the children in common, each annual assessment on the furnishings of the home should be given a single total valuation and allowed but a single exemption. *National Bank of Washington* v. *District of Columbia* (1949, 176 F. 2d 62, 85 U. S. App. D. C. 187).

In taxpayer's suit to recover money seized in payment of personal property tax, taxpayer's evidence, comprised solely of evidence of value computed by straight line depreciation was insufficient to sustain burden of proving that assessor's valuation was incorrect. *District of Columbia* v. *Capital Laundry and Dry Cleaners* (D. C. Mun. App. 1954, 106 A. 2d 695).

Construction with other laws

Congress' enactment of special detailed legislation for taxation of railroad locomotives and rolling stock in District of Columbia part of time did not negative such construction of general taxing statutes of District as would permit levy of apportioned taxes on other personal property, nor did Congress' special legislation taxing motor vehicles and mercantile establishments, including common carriers by vessels entering District, effect such result. *District of Columbia* v. *Smoot Sand & Gravel Corp.* (1951, 184 F. 2d 987, 87 U.S. App. D.C. 248, certiorari denied 71 S. Ct. 498, 340 U.S. 933, 95 L. Ed. 674).

Offer of payment

Where holder of liens on household furniture and personal effects offered to give collector of taxes an uncertified

check for taxes assessed against personalty, but there was no offer to pay interest or expenses, and offer was made on non-business day, over telephone, while trucks and men were at hand to move personalty to auction rooms, and during preceding business week lien holder had asserted existence of his outstanding liens on personalty, and had subsequently asserted absolute ownership in himself, and at no time during such week had lien holder tendered payment of taxes, collector was justified in refusing to stay orderly course of collection proceedings, and refusal of Collector to accept offer did not preclude sale of personalty for taxes. *Pearson* v. *Laughlin* (1951, 190 F. 2d 658, 89 U.S. App. D.C. 130).

Review

Where the question of penalties and interest is not raised below, the court will not consider them on appeal since it is essential that the administrative remedy be fully available and exhausted before resort is had to judicial review. *National Bank of Washington* v. *District of Columbia* (1949, 176 F. 2d 62, 85 U. S. App. D. C. 187).

§ 47–1203. Assessor to prepare printed blank forms—Mode of assessment, returns—False affidavit, penalty.

The assessor of the District of Columbia, or his successor in office, shall annually cause to be prepared a printed blank schedule of all tangible personal property and all general merchandise or stock in trade, owned or held in trust or otherwise, subject to taxation under the provisions of sections 47–1201 to 47–1214, 47–1301 to 47–1305, 47–1701 to 47–1709, and of the classes of corporations and companies to be assessed, to which shall be appended a form in blank, setting forth that the foregoing presents a full and true statement of all such personal property, taxable capital, or other basis of assessment, or either, as the case may be. When said schedule is ready for delivery, notice thereof shall be given by the assessor by advertisement for three successive secular days in one or more of the daily newspapers published in said District, and a copy of said schedule shall be delivered to any citizen applying therefor at the office of the assessor Every person, association, corporation, firm, or company in said District liable to taxation hereunder, and every association, company, executor, administrator, guardian, or trustee holding personal property in trust liable to taxation hereunder, shall, within thirty days after the last publication of said advertisement, as aforesaid, fill out the proper blanks in said schedule with a full and true statement, as in this section hereinbefore required, which statement shall also contain, or be verified by, a written declaration that it is made under the penalties of perjury, such declaration to be signed by, and over the address in the District of Columbia of, said person, association, corporation, firm, company, executor, administrator, guardian, or trustee making the statement required hereby, thereupon said board of personal-tax appraisers, or any one of the members thereof, shall assess said property at its fair cash value, and enter the same in the columns upon said blanks provided for that purpose, and the amount thus ascertained shall be entered upon the books for taxation for each fiscal year: *Provided,* That if any person, firm, association, corporation, company, administrator, executor, guardian, or trustee shall fail to make and deliver to the assessor or one of the said appraisers, within thirty days after the date of the last advertisement of the notice hereinbefore required, the schedule of his or its said personal property owned, held in trust, or otherwise, as provided for in this section, then the said board of personal-tax appraisers hereinbefore provided for shall without delay, from the best information they can procure, make an assessment against such person, firm, association, corporation, company, administrator, executor, guardian, or trustee, to which they shall add twenty per centum thereof: *Provided further,* That if the said board of personal-tax appraisers be not satisfied as to the correctness of the return of personal property made by any person, firm, association, corporation, company, administrator, executor, guardian, or trustee, said board may reject said return, and said board, or any one of the members thereof, may, from the best information he or they can procure, or by making such examination of the personal property as may be practicable, assess the same in such amount as may to him or them seem just; and notice of the rejection of the return shall be given to the party interested by leaving the same at the address given in said return, and in all such cases there shall be a right of appeal from the action taken by said appraisers to the board of personal-tax appeals, or to their successors in office, within fifteen days after delivery of said notice of rejection as aforesaid: *And provided further,* That if any person, firm, association, corporation, company, administrator, executor, guardian, or trustee shall make a false statement touching the matters herein provided for, he or they shall be deemed guilty of perjury, and upon conviction thereof shall be subject to the penalties for that offense now provided by section 22–2501. (July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1; May 18, 1954, 68 Stat. 116, ch. 218, title X, § 1003.)

AMENDMENT

1954—Act May 18, 1954, eliminated the requirement of making an affidavit on personal property tax returns.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 1004 of act May 18, 1954, provided that: "The provisions of this title [amending this section and section 47–1208] shall become effective on July 1 next following the date of approval of this Act [May 18, 1954]."

NOTES TO DECISIONS

In general

This is the only power under the statute for the reassessment of personal property except as provided in § 759 (§ 47–1212). *Tumulty* v. *District of Columbia* (1939, 102 F. 2d 254, 69 App. D. C. 390).

Estoppel

Taxpayer was not estopped from denying, for personal property tax purposes, the figures set up by her in her income tax returns for depreciation purposes. *District of Columbia* v. *Morris* (1947, 159 F. 2d 13, 81 U. S. App. D. C. 356).

Measure of tax

Although the district code allows dealers in business to evaluate and make personalty tax returns based on their average stock in trade for a preceding year, such "measure" of the tax is a matter of convenience, and cannot be substituted for true value of personalty of a bankrupt in the hands of its trustee at the time of the assessment. *Brown, Trustee in Bankruptcy, etc.* v. *Collector of Taxes for the District of Columbia* (1957, 247 F. 2d 786, 101 U.S. App. D.C. 200).

Where district's assessment of personalty of bankrupt in trustee's hands was based upon average stock in trade of bankrupt in year prior to beginning date of fiscal year for which assessment was made, such valuation was incorrect unless the amount in dollars also represented

a full and true value of such personalty in lawful money. *Id.*

Method of depreciation

The fair cash value of personal property for taxation purposes is generally equivalent to its actual or market value, and cannot be arrived at by using a straight line depreciation computation based on original costs. *District of Columbia* v. *Capital Laundry and Dry Cleaners* (D. C. Mun. App. 1954, 106 A. 2d 695).

Migratory property

Section 47–501 and this chapter authorizing taxation by District of Columbia of all tangible "personal property subject to taxation" contemplate personal property having a definite and permanent situs in the District and not temporarily brought into District by nonresident, and said § 47–501 and this chapter apply only to property that has acquired a fixed, definite and permanent taxable situs. *Queen City Brewing Co.* v. *District of Columbia* (1943, 134 F. 2d 44, 77 U. S. App. D. C. 213, certiorari denied 63 S. Ct. 1330, 319 U. S. 767, 87 L. Ed. 1716).

To justify ad valorem assessment on migratory personal property belonging to a nonresident of taxing district, the statute must show not only the kind and character of migratory property to be taxed, but must provide a method of determining whether articles present on a particular day fairly average the kind, quantity and value of the replacement calculated on an annual basis, and there must be adequate machinery to determine and assess the valuation. *Id.*

Where Maryland beer manufacturer, which was not engaged in business in District of Columbia, delivered beer sold to District of Columbia distributor in containers which remained in District only until they were empty, containers which were found in the District on the statutory tax assessment date were not subject to ad valorem assessment, since the District of Columbia statutes do not place ad valorem assessment on migratory personal property belonging to nonresident not engaged in business in the District. *Id.*

Nonresident

Where this section, which required filing of return as basis for ad valorem assessment, applied only to persons, associations, corporations or companies in the District of Columbia, a company which did no business in the District and maintained no agencies therein was not required to pay a tax. *Queen City Brewing Co.* v. *District of Columbia* (1943, 134 F. 2d 44, 77 U. S. App. D. C. 213, certiorari denied 63 S. Ct. 1330, 319 U. S. 767, 87 L. Ed. 1716).

To justify taxation of personal property belonging to nonresident not engaged in business in taxing district, the assessment on which tax is based must, in addition to other safeguards to insure fairness, be required by a statute definitely identifying the kind and character of the property subject to the tax. *Id.*

Place taxable

Personal property, in absence of a law to the contrary, follows the person of the owner and has its "situs" at his domicile, but one exception is that for purpose of taxation personal property may be taxed at the place where it is actually located. *Queen City Brewing Co.* v. *District of Columbia* (1943, 134 F. 2d 44, 77 U. S. App. D. C. 213, certiorari denied 63 S. Ct. 1330, 319 U. S. 767, 87 L. Ed. 1716).

Property of bankrupt

Personalty of a bankrupt, in the hands of trustee in bankruptcy on July 1, 1954, was subject to district's personal property tax for the fiscal year commencing on that date, notwithstanding the fact that such date of assessment was subsequent to the date of bankrupt's adjudication in bankruptcy, and that the trustee did not conduct any business. *Brown, Trustee in Bankruptcy, etc.* v. *Collector of Taxes for the District of Columbia* (1957, 247 F. 2d 786, 101 U.S. App. D.C. 200).

A trustee in bankruptcy is such a "person" as is bound to make and deliver a return on personalty in his hands, under statute providing for taxation of all tangible personalty and all general merchandise or stock in trade owned or held in trust or otherwise. *Id.*

Special legislation

Congress' enactment of special detailed legislation for taxation of railroad locomotives and rolling stock in District of Columbia part of time did not negative such construction of general taxing statutes of District as would permit levy of apportioned taxes on other personal property, nor did Congress' special legislation taxing motor vehicles and mercantile establishments, including common carriers by vessels entering District, effect such result. *District of Columbia* v. *Smoot Sand & Gravel Corp.* (1950, 184 F. 2d 987, 87 U.S. App. D.C. 248, certiorari denied 71 S. Ct. 498, 340 U.S. 933, 95 L. Ed. 674).

Tax returns

This section and § 47–1206 require that every resident shall file with the assessor of the District a tax return as of July 1, of each year, containing a true statement of his personal property for the purpose of taxation. *Hunt* v. *District of Columbia* (1940, 108 F. 2d 10, 71 App. D. C. 143).

Validity of assessment

It is fundamental to tax validity that there be a valid assessment. *Tumulty* v. *District of Columbia* (1939, 102 F. 2d 254, 69 App. D. C. 390).

It is a rule without exception that if a property tax assessment is not properly made, there is no proper basis for a tax, and a tax attempted to be collected is void. *Id.*

§ 47–1204. Tangible personal property stored in transit.

Nothing in this Act contained, nor shall any prior Act of Congress relating to the District of Columbia be deemed to impose upon any person, firm, association, company, or corporation a tax based upon tangible personal property owned and stored by such person in a public warehouse in the District of Columbia for a period of time no longer than is necessary for the convenience or exigencies of reshipment and transportation to its destination without the District of Columbia. (July 26, 1939, 53 Stat. 1110, ch. 367, title IV, § 6.)

REFERENCES IN TEXT

"This Act", referred to in the text, means the District of Columbia Revenue Act of 1939, act July 26, 1939, ch. 367. For classification of this Act in this Code, see Tables.

§ 47–1205. "Resident of the District of Columbia" defined.

Any person maintaining a place of abode in the District of Columbia on the 1st day of July of a taxable year, and for the three months prior thereto, shall be considered as a resident for the purpose of assessment on intangible property wherever located, unless evidence shall be submitted to the assessor of the District of Columbia, satisfactory to him, that such intangible personal property or the income thereof is taxed to said person in some other jurisdiction, or that the assets of a corporation or association represented by shares or certificates constituting such intangible personal property are taxed by the state in which such corporation or association is chartered or organized and in which such person has a legal residence, in lieu of a tax upon such shares or certificates: *Provided,* That Cabinet officers and persons in the service of the United States Government elected for a definite term of office shall not be considered as residents of the District of Columbia for the purposes of this section. (July 3, 1926, 44 Stat. 833, ch. 759, § 2; Feb. 18, 1929, 45 Stat. 1227, ch. 259, § 4.)

AMENDMENT

1929—Act. Feb. 18, 1929, deleted the words, "January 1 of any year, and for six months or more" and inserted in lieu thereof the following: "The 1st day of July of a taxable year, and for three months."

TAXATION OF INTANGIBLE PERSONALTY

Tax on intangible personalty not to apply with respect to any year subsequent to the fiscal year ending June 30, 1939, see note under § 47–1201.

NOTES TO DECISIONS

Business of handling and investing funds

Handling, investment, and reinvestment of substantial funds, by what must be a considerable staff of officers, agents, and employees, clearly constitutes the carrying on of business in the District within the meaning of the statute and the applicable decisions. *Hazen* v. *National Rifle Assn.* (1939, 101 F. 2d 432, 69 App. D. C. 339).

Constitutionality

One who questions the constitutionality of this act must show that he is within the class of persons with respect to whom the act is alleged to be unconstitutional, and the alleged unconstitutional feature injures him. *Heald* v. *District of Columbia* (1922, 42 S. Ct. 434, 259 U. S. 114, 66 L. Ed. 852).

Government employee

A resident of Boston who, upon his discharge from military service, entered the Government service in Washington, D. C., always intending to return to Boston when his service had expired, was not liable to tax on his intangible personalty imposed by the District, since Boston continued to be his domicil. *Sweeney* v. *District of Columbia* (1940, 113 F. 2d 25, 72 App. D. C. 30).

Payment of tax

Fact that appellant paid tax on home in District of Columbia did not create a residence there, for the statute expressly recognizes that persons "maintaining a place of abode" there may have a legal residence elsewhere *Nixon* v. *Nixon* (1938, 198 A. 154, 329 Pa. 256).

Resident

"Resident" as used in this section means "domiciled," which is the normal and usual meaning of "resident." *Sweeney* v. *District of Columbia* (1940, 113 F. 2d 25, 72 App. D. C. 30).

A nonstock co-operative membership corporation incorporated under Maryland laws and comprising some 1,150 dairy farmers as members, by carrying on commercial transactions in the District of Columbia, established its "commercial domicile" in the District and was "engaged in business" in the District and was thus subject to intangible personal property tax there, even though its "legal residence" was in Maryland. *Maryland & Virginia Milk Producers' Ass'n* v. *District of Columbia* (1941, 119 F. 2d 787, 73 App. D. C. 399, certiorari denied 62 S. Ct. 87. 314 U. S. 646, 86 L. Ed. 518).

Return

A resident of the District must file personal property return for taxation whether the taxing statute of 1926 is constitutional or not, since it would be taxable under the 1916 act. *Cogger* v. *Hazen* (1936, 85 F. 2d 695, 66 App. D. C. 196, certiorari denied 57 S. Ct. 191, 299 U. S. 598, 81 L. Ed. 441).

A report must be had of the appellant's property in order that an assessment may be made, and this is so whether it is under the act of 1916 or the amending act of 1926. *Id.*

Claim made by appellant concerning his payment of taxes upon the income of the stocks owned by him to the Federal collector at Baltimore was without merit, and it was still necessary to file a personal property return with the assessor of the District. *Id.*

§ 47–1206. Returns to be made in July of each year.

Returns of all personal property shall be made in the month of July in the fiscal year in which the assessment is levied and the value of such property shall be made as of the first day of that month except that merchants shall continue to return their average stock in trade as provided in section 47–1212. (July 3, 1926, 44 Stat. 833, ch. 759, § 6; Feb. 18, 1929, 45 Stat. 1227, ch. 259, § 6; May 18, 1954, 68 Stat. 112, ch. 218, § 607.)

AMENDMENTS

1954—Act May 18, 1954, deleted the words "other than automobiles", following "personal property."

1929—Act Feb. 18, 1929, amended section generally. Prior to such amendment, section read as follows: "That the returns of personal property provided for in section 6 of the said act of July 1, 1902, shall be made during the month of March in the fiscal year preceding the one under which the assessment is to be levied, and, except as otherwise provided by law, the value of tangible and intangible property shall be taken as of January 1 for a basis of assessment for the next fiscal year."

NOTES TO DECISIONS

Error in valuation

Taxpayer complied with his duty. He made a true statement of his investment in marginal stocks according to the legal requirement and was taxed on the item. The difference between the amount of the investment and the value of the stocks was, at most, an error in valuation and not an omission, since omitted property means property which is not assessed at all and not property which is merely undervalued. *Hunt* v. *District of Columbia* (1940, 108 F. 2d 10, 71 App. D. C. 143).

Property of bankrupt

Personalty of a bankrupt, in the hands of trustee in bankruptcy on July 1, 1954, was subject to district's personal property tax for the fiscal year commencing on that date, notwithstanding the fact that such date of assessment was subsequent to the date of bankrupt's adjudication in bankruptcy, and that the trustee did not conduct any business. *Brown, Trustee in Bankruptcy, etc.* v. *Collector of Taxes for the District of Columbia* (1957, 247 F. 2d 786, 101 U.S. App. D.C. 200).

§ 47–1207. Rate of taxation—Exceptions.

On all tangible personal property, assessed at a fair cash value (over and above the exemptions provided in section 47–1208), including vessels, ships, boats, tools, implements, horses, and other animals, carriages, wagons, and other vehicles, there shall be paid to the collector of taxes of the District of Columbia the rate of tax provided by law. (July 1, 1902, 32 Stat. 618, ch. 1352, § 6, par. 2; June 29, 1922, 42 Stat. 669, ch. 249.)

CODIFICATION

This section formerly provided for a tax of 1½ per centum of the assessed value of the property, but act June 29, 1922, provided that the rates should be fixed annually by the Commissioners.

Acts Sept. 1, 1916, 39 Stat. 717, ch. 433, § 11, and Mar. 3, 1917, 39 Stat. 1046, ch. 160, § 9, added the following paragraph: "The moneys and credits, including moneys loaned and invested, bonds and shares of stock (except the stock of banks and other corporations within the District of Columbia the taxation of which banks and corporations is herein provided for) of any person, firm, association, or corporation resident or engaged in business within said District shall be scheduled and appraised in the manner provided by paragraph one of said section six (section 47–1203) for listing and appraisal of tangible personal property and assessed at their fair cash value, and as taxes on said moneys and credits there shall be paid to the tax collector of said District not less than five-tenths of one per centum (.5%) of the value thereof: *Provided,* That savings deposits of individuals in a sum not in excess of five hundred dollars ($500) deposited in banks, trust companies, or building associations, subject to notice of withdrawal and not subject to check, shall be exempt from this tax: *Provided, further,* That such tax on moneys and credits shall not apply to bank notes or notes discounted or negotiated by any bank or banking institution, savings institution, or trust company, nor to

savings institutions having no capital stock, building associations, firemen's relief associations, secret and beneficial societies, labor unions, and labor-union relief associations, nor to beneficial organizations paying sick or death benefits, or either or both, from funds received from voluntary contributions or assessments upon members of such associations, societies, or unions; nor shall the provisions of this section apply to life or fire insurance companies having no capital stock, nor to the shares of stock of business companies which by reason of or in addition to incorporation receive no special franchise or privilege, but all such corporations shall be rated, assessed, and taxed as individuals conducting business in similar lines are rated, assessed, and taxed: *And provided further,* That corporations, limited partnerships, and joint-stock associations within said District liable to tax under the laws of said District on earnings or capital stock shall not be required to make any report or pay any further tax under this section on the mortgages, bonds, and other securities owned by them in their own right, but such corporations, partnerships, and associations holding such securities as trustees, executors, administrators, guardians, or in any other manner shall return and pay the tax imposed by this section upon all securities so held by them as in the case of individuals." The provisions of this paragraph expired as of June 30, 1939, under act July 26, 1939, 53 Stat. 1107, ch. 367, title IV, § 1, except for certain purposes. See note under § 47–1201.

NOTES TO DECISIONS

Bond exemptions

Considering the sweeping language of exemption in the bonding acts, there is no difficulty in holding that they apply to the District of Columbia as well as all other portions of the United States. *District of Columbia* v. *Riggs Nat. Bank* (1929, 30 F. 2d 873, 58 App. D. C. 349).

Cash used in business

Where this section required moneys and credits to be assessed at their fair cash value but Maryland corporation operating department stores in New York, Baltimore and Washington reported only cash on hand and in banks in District of Columbia on tax date, taxpayer constantly shifted cash as needs of stores required, and considerably more cash was usually deposited in local bank than was on deposit in local banks on the tax day, determination that all taxpayer's cash was available for use by its Washington store and assessment against taxpayer of a percentage of its cash wherever deposited, fixed by the ratio of Washington sales and profits to total sales and profits, was proper. *Hecht Co.* v. *District of Columbia* (1942, 129 F. 2d 353, 76 U. S. App. D. C. 142).

Constitutionality

Federal taxation of the District of Columbia is valid even though residents have not the suffrage and may not vote on the expenditure of money raised. *Heald* v. *District of Columbia* (1922, 42 S. Ct. 434, 259 U. S. 114, 66 L. Ed. 852).

Should it ultimately be determined that Congress, disregarding the authoritative rulings of the Supreme Court, intended in this act to tax here property located elsewhere, it would by no means follow that as to persons and property clearly subject to taxation here the act would be void. *Heald* v. *District of Columbia* (1921, 269 F. 1015, 50 App. D. C. 231).

Constitutionality of section which levies tax on intangible personal property cannot be questioned in a mandamus proceeding to compel the District resident to file a return of his personal property. *Cogger* v. *Hazen* (1936, 85 F. 2d 695, 66 App. D. C. 196).

Engaging in business

The handling, investment, and reinvestment of substantial funds, by what must have been a considerable staff of officers, agents, and employees, clearly constitutes the carrying on of business in the District of Columbia within the meaning of this section. *Hazen* v. *National Rifle Assn.* (1939, 101 F. 2d 432, 69 App. D. C. 339).

Original package doctrine

The original package doctrine urged by the petitioner concerns only the question whether the property is or is not an import, but the doctrine is immaterial in this case because the tax is imposed even if the property retains its character as an import. *Mercury Press* v. *District of Columbia* (1949, 173 F. 2d 636, 84 U. S. App. D. C. 203, certiorari denied 69 S. Ct. 1495, 337 U. S. 931, 93 L. Ed. 1738).

Power to tax

When Congress legislates for the District of Columbia alone, it acts under the direct authority of the Constitution and in so acting has plenary legislative power. There is no constitutional prohibition upon the Federal Government in respect to the taxation of imports and there was ample power for the tax in the case involved. *Mercury Press* v. *District of Columbia* (1949, 173 F. 2d 636, 84 U. S. App. D. C. 203, certiorari denied 69 S. Ct. 1495, 337 U. S. 931, 93 L. Ed. 1738).

Residents of District

As appellants are residents of the District and the property taxed is within the District, they are clearly subject to the provisions of this act. *Heald* v. *District of Columbia* (1921, 269 F. 1015, 50 App. D. C. 231).

Review

Where the Court of Appeals of the District of Columbia attempts to interpret this statute it is not entitled to certify questions to the Supreme Court as to the validity of the statute, in view of prior decisions of this court holding that such interpretation would be subject to review by appeal to this court. *Heald* v. *District of Columbia* (1920, 41 S. Ct. 42, 254 U. S. 20, 65 L. Ed. 106).

Special legislation

Congress' enactment of special detailed legislation for taxation of railroad locomotives and rolling stock in District of Columbia part of time did not negative such construction of general taxing statutes of District as would permit levy of apportioned taxes on other personal property, nor did Congress' special legislation taxing motor vehicles and mercantile establishments, including common carriers by vessels entering District, effect such result. *District of Columbia* v. *Smoot Sand & Gravel Corp.* (1950, 184 F. 2d 987, 87 U.S. App. D.C. 248, certiorari denied 71 S. Ct. 498, 340 U.S. 933, 95 L. Ed. 674).

Vessels, ships, and boats

This section providing for general tax on all tangible personal property in District, including vessels, ships and boats, supports tax on foreign corporation's tugs, scows and launches, used by it for transportation of sand and gravel from adjoining states to storage places in District and thereafter to points of delivery in such states, on fair apportionment basis. *District of Columbia* v. *Smoot Sand & Gravel Corp.* (1950, 184 F. 2d 987, 87 U.S. App. D.C. 248, certiorari denied 71 S. Ct. 498, 340 U.S. 933, 95 L. Ed. 674).

Vessels, ships and boats, expressly included in tangible personal property subjected by this section to taxation by District of Columbia, may not be excluded merely because their domiciliary situs is not in District. *Id.*

§ 47–1208. Personal property exempt from taxation.

The following personal property shall be exempt from taxation.

First. The personal property of all library, benevolent, charitable, and scientific institutions incorporated under the laws of the United States or of the District of Columbia and not conducted for private gain.

Second. Libraries of nonprofit organizations and household belongings located in any dwelling house or other place of abode, or in storage, and boats, not held for sale or rent and not held for use or used in any trade or business. For the purposes of this section, the words "household belongings" shall include all libraries, schoolbooks, wearing apparel, family portraits, pictures, furniture, furnishings, rugs, silverware, china, glassware, musical instruments, radios, television sets, refrigerators, food, photographic equipment, bicycles, tools, clocks, watches, jewelry, and other articles of personal

adornment, and other tangible personal property (excluding automobiles and other motor vehicles) ordinarily kept and used or held for use by the occupant of any dwelling house or other place of abode for the ordinary purposes of life. For the purposes of this section, the words "trade or business" shall include the engaging in or carrying on of any trade, business, profession, vocation, calling, rental of property, commercial activity, and any other activity carried on or engaged in for livelihood or profit.

Third. Repealed. May 18, 1954, 68 Stat. 112, ch. 218, § 1002.

Fourth. Repealed. May 18, 1954, 68 Stat. 112, ch. 218, § 1002.

Fifth. Works of art owned by a nonresident of the United States who is not a citizen of the United States lent without charge to the Trustees of the National Gallery of Art solely for exhibition without charge to the general public.

Sixth. Any motor vehicle or trailer registered in accordance with the provisions of sections 40–101 to 40–105, and not comprising any part of the stock in trade of a merchant: *Provided,* That any motor vehicle or trailer comprising all or part of the stock in trade of any merchant shall continue to be taxed as provided by law: *Provided further,* That special equipment mounted on a motor vehicle or trailer and not used primarily for the transportation of persons or property shall be taxed as tangible personal property as provided by law. (July 1, 1902, 32 Stat. 620, ch. 1352, § 6, par. 10; Apr. 28, 1904, 33 Stat. 564, ch. 1815; Mar. 4, 1913, 37 Stat. 1006, ch. 150, § 10; Sept. 1, 1950, 64 Stat. 576, ch. 836, § 3; May 18, 1954, 68 Stat. 112, ch. 218, §§ 605, 1001, 1002; Sept. 4, 1957, 71 Stat. 606, Pub. L. 85–281, § 6.)

CODIFICATION

Act May 18, 1954, added subpar. Fifth to par. 10 of section 6 of act July 1, 1902, without reference to subpar. Fifth which was added by act Sept. 1, 1950. For purposes of codification, subpar. Fifth added by act May 18, 1954, is redesignated "Sixth."

AMENDMENTS

1957—Subpar. Second amended by act Sept. 4, 1957, which deleted the phrase "(to the extent of the first $1,000 of their value)" and inserted a comma after the word "boats."

1954—Subpar. Second amended generally by act May 18, 1954, § 1001. Prior to such amendment, subpar. Second read as follows: "Libraries, schoolbooks, wearing apparel, and all family portraits."

Subpars. Third and Fourth, which exempt household and other belongings, not held for sale, to the value of $1,000, and household or other belongings not held for sale and owned by any person in the public service temporarily residing in the District of Columbia, were repealed by act May 18, 1954, § 1002.

Subpar. Sixth was added by act May 18, 1954, § 605. See Codification Note above.

1950—Subpar. Fifth added by act Sept. 1, 1950.

1913—Act Mar. 4, 1913, added subpar. Fourth.

1904—Act Apr. 28, 1904, deleted the words "articles of personal adornment" following the words "all family portraits" in subpar. Second.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 4, 1957, effective July 1, 1958, see section 8 of act Sept. 4, 1957, set out as a note under § 47–1557a.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of subpar. Second and repeal of subpars. Third and Fourth effective on July 1, 1954, see section 1004 of act May 18, 1954, set out as a note under section 47–1203.

Subpar. Sixth of this section effective on and after the 1st day of April, 1955, see section 610 of act May 18, 1954, set out as a note under section 40–102.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 4 of act Sept. 1, 1950, provided in part that subpar. Fifth shall be applicable beginning July 1, 1950.

CROSS REFERENCES

Credit unions exempted from taxation except on real estate, see § 26–516.

Exemptions from income taxes, see §§ 47–1502, 47–1567a.

Exemptions from real estate taxes, see § 47–801a et seq.

NOTES TO DECISIONS

Pecuniary interest

Statement by Court of Appeals in opinion that term "private gain" as used in this section, exempting from taxation scientific institutions not conducted for "private gain" has reference only to gain realized by any individual or stockholder, who has a "pecuniary interest" in corporation, can be considered correct only if term "pecuniary interest" is interpreted very broadly. *District of Columbia* v. *Sport Fishing Institute* (1958, 252 F. 2d 841, 102 U.S. App. D.C. 277).

Private gain

District of Columbia code provision making exempt from taxation the personal property of benevolent and charitable institutions "not conducted for private gain" uses the quoted phrase to modify "institutions" and not "personal property," and accordingly restaurant property of religious shrine which was leased to private operator under percentage agreement, with the monies derived by the shrine therefrom going to its further development, was exempt from taxation. *District of Columbia* v. *The National Shrine of the Immaculate Conception, Inc.* (1963, 315 F. 2d 42, 114 U.S. App. D.C. 296).

Where District of Columbia Corporation, which was organized to promote sport fishing, had no capital stock and paid no dividends, but it was organized and existed primarily, though indirectly, for financial and commercial benefit and advantage of group of fishing tackle manufacturers, it was conducted for "private gain" within meaning of this section exempting from taxation scientific institutions not conducted for "private gain," and therefore, it was not exempt from taxation. *District of Columbia* v. *Sport Fishing Institute* (1958, 252 F. 2d 841, 102 U.S. App. D.C. 277).

Scientific institutions

National Wildlife Federation, being a scientific institution, incorporated under District laws and not conducted for private gain, is exempt from taxation of its personal property by District notwithstanding Federation activities in District are relatively minor when measured in terms of purely local benefits. *District of Columbia* v. *National Wildlife Federation* (1954, 214 F. 2d 217, 93 U.S. App. D.C. 387).

A university is "scientific institution" within provision of this section exempting from taxation personalty of scientific institutions incorporated under laws of United States or of District of Columbia and not conducted for private gain. *District of Columbia* v. *Catholic Education Press* (1952, 199 F. 2d 176, 91 U. S. App. D. C. 126, certiorari denied 73 S. Ct. 276, 344 U. S. 896, 97 L. Ed. 693).

Evidence established that a nonprofit, nonstock corporation having corporate purpose of preparing, publishing and distributing educational, literary, scientific and religious matter was a facility of university and was exempt from taxation under this section as being a scientific institution. *Id.*

§ 47–1209. Payment of taxes—To be made semiannually—Mandamus to compel filing sworn return—Expenses.

Real-estate taxes and personal taxes of all kinds shall hereafter be payable semiannually in equal

instalments in the months of September and March. If either of said instalments on real or personal property shall not be paid within the months when the same is due, said instalments shall thereupon be in arrears and delinquent, and there shall be added and collected with said tax a penalty of 1 per centum per month upon the amount thereof for the period of such delinquency, and such instalment or instalments, with the penalties thereon, shall constitute a delinquent tax to be collected in the manner now provided by law.

If any person neglects or refuses to file a return of personal property as required by law, and the assessor certifies to the Board of Commissioners that, in his opinion, the best information obtainable does not afford a satisfactory basis for assessment, the Board of Commissioners may, by petition to the United States District Court for the District of Columbia for mandamus against such person, compel the filing of a sworn return, and in such case the court shall require the person at fault to pay all expenses of the proceeding. (July 3, 1926, 44 Stat. 833, ch. 759, § 5; Feb. 18, 1929, 45 Stat. 1227, ch. 259, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; May 18, 1954, 68 Stat. 112, ch. 218, § 606.)

AMENDMENTS

1954—Act May 18, 1954, deleted the words "excepting the tax on motor vehicles as herein provided" from the first sentence.

1929—Act Feb. 18, 1929, required real-estate taxes and personal taxes, excepting the tax on motor vehicles, to be paid semiannually in equal instalments in the months of September and March, and added the second paragraph.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act May 18, 1954, effective on April 1, 1955, see section 610 of act May 18, 1954, set out as a note under § 40–102.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

MANDAMUS

Writs of mandamus abolished, see Federal Rule of Civil Procedure 81(b), 28 U.S.C. App.

CROSS REFERENCES

Payment of taxes on family dwellings, see §§ 47–901 to 47–906.

Time within which assessments may be made and collected, see § 47–1408.

NOTES TO DECISIONS

Payment under protest

Where litigation, determining that trust companies were subject merely to tax of 4 per cent of their gross earnings after deduction of interest paid on savings deposits, had not been concluded at time they paid, under protest, gross earnings tax of 6 per cent, without deduction of interest paid on savings deposits; and they would have risked penalties of 1 per cent a month and summary distraint of their property by not paying, it could not be said that payments had been made "voluntarily," so as to preclude recovery. *District of Columbia* v. *American Security & Trust Co.* (1953, 202 F. 2d 21, 92 U.S. App. D.C. 33).

Returns

Receiver of insolvent bank is obligated to file tax return, although 100 percent assessment on stock had been levied. *Hazen* v. *Hardee* (1935, 78 F. 2d 230, 64 App. D. C. 346).

Claim made by appellant concerning his payment of taxes upon the income of the stocks owned by him to the Federal collector at Baltimore was without merit, and it was still necessary to file a personal property return with the assessor of the District. *Cogger* v. *Hazen* (1936, 85 F. 2d 695, 66 App. D. C. 196).

Commissioners are specifically authorized to compel the filing of a sworn return by any person required by law to file such a return. *Hazen* v. *National Rifle Assn.* (1939, 101 F. 2d 432, 69 App. D. C. 339).

Void assessment

A tax based upon a void assessment may be questioned or attacked wherever found. *Tumulty* v. *District of Columbia* (1939, 102 F. 2d 254, 69 App. D. C. 390).

§§ 47–1210, 47–1211. Repealed. May 18, 1954, 68 Stat. 112, ch. 218, title VI, §§ 608, 609.

Section 47–1210, acts Feb. 18, 1929, 45 Stat. 1226, ch. 259, § 3; July 26, 1939, 58 Stat. 1108, ch. 367, § 4, related to the assessment of motor vehicles.

Section 47–1211, act July 26, 1939, 53 Stat. 1108, ch. 367, § 4, related to the manner of assessment of motor vehicles having a situs within the District.

EFFECTIVE DATE OF REPEAL

Repeal of sections by act May 18, 1954, effective on April 1, 1955, see section 610 of act May 18, 1954, set out as a note under § 40–102.

§ 47–1212. Mercantile establishments and carriers by water.

Dealers in general merchandise of every description shall pay to the collector of taxes of the District of Columbia one and one-half per centum on the average stock in trade for the preceding year.

It shall be unlawful for any person or persons entering the District of Columbia subsequent to June 30th in each year and establishing a place of business for the sale of goods, wares, or merchandise, either at private sale or at auction, or engaging in the business of common carrier by vessels, ships, or boats, to conduct such business until a sworn statement of the value of such stock, vessels, ships, and boats has been filed with the assessor of the District of Columbia, who shall thereupon render a bill for the unexpired portion of the fiscal year at the same rate as other personal taxes are levied: *Provided,* That this shall not apply to vessels, ships, or boats if it shall be made to appear by affidavit that any vessel, ship, or boat has been assessed for taxation and the taxes paid elsewhere.

The assessor is hereby authorized to reassess said stock whenever in his judgment it has been undervalued. The goods, wares, and merchandise of any person or persons who shall fail to pay the tax required by this section within three days after beginning business shall be subject to distraint, and it shall be the duty of the assessor to place bills therefor in the hands of the collector of taxes, who shall seize sufficient of the goods of the delinquent to satisfy said tax: *Provided,* That said owner shall have the right of redemption within thirty days on payment of said tax, to which shall be added a penalty of one per centum, together with the cost of seizure. The collector shall sell such goods as are not redeemed at public auction, after advertisement

for the three days preceding said sale. (July 1, 1902, 32 Stat. 618, ch. 1352, § 6, par. 3; Apr. 28, 1904, 33 Stat. 563, ch. 1815, § 2.)

AMENDMENT

1904—Act Apr. 28, 1904, added words "or engaging in the business of common carrier by vessels, ships, or boats" after the word "auction" as it appears in the first paragraph; the words "vessels, ships, and boats" after the word "stock" as it appears in the first paragraph; and, the proviso in the first paragraph.

RATE OF TAX ON AVERAGE STOCK IN TRADE

The rate prescribed by the first sentence of the section is no longer applicable. The rate is fixed by the Commissioners as authorized by § 47–501.

NOTES TO DECISIONS

Measure of tax

Although this section allows dealers in business to evaluate and make personalty tax returns based on their average stock in trade for a preceding year, such "measure" of the tax is a matter of convenience, and cannot be substituted for true value of personalty of a bankrupt in the hands of its trustee at the time of the assessment. *Brown, Trustee in Bankruptcy etc.* v. *Collector of Taxes for the District of Columbia* (1957, 247 F. 2d 786, 101 U.S. App. D.C. 200).

Where district's assessment of personalty of bankrupt in trustee's hands was based upon average stock in trade of bankrupt in year prior to beginning date of fiscal year for which assessment was made, such valuation was incorrect unless the amount in dollars also represented a full and true value of such personalty in lawful money. *Id.*

Merchandise taxable

This section relates to the assessment of merchandise belonging to persons who enter the District subsequent to June 30th and establish a place of business for the sale of goods, wares, and merchandise either at private sale or at auction. *Tumulty* v. *District of Columbia* (1939, 102 F. 2d 254, 69 App. D. C. 390).

Regulations

Where regulations provided that average inventory means net cost of goods delivered or the actual cost of goods minus any cash discounts from which a further deduction of 5 per cent, will be allowed, and taxpayer estimated its cost according to retail inventory method of accounting by deducting from resale price the average percentage of markup over cost, the taxpayer was not entitled to an additional 8 per cent, for markdown, since no markdown from resale price could affect cost. *Hecht Co.* v. *District of Columbia* (1942, 129 F. 2d 353, 76 U.S. App. D.C. 142).

Where taxpayer made incorrect returns and underpaid its personal property taxes, assessor's practice of applying new regulations permitting greater deductions in determining value of accounts receivable was unauthorized and taxpayer's tax liability was to be determined in accordance with regulations in force when tax returns were filed. *Id.*

Special legislation

Congress' enactment of special detailed legislation for taxation of railroad locomotives and rolling stock in District of Columbia part of time did not negative such construction of general taxing statutes of District as would permit levy of apportioned taxes on other personal property, nor did Congress' special legislation taxing motor vehicles and mercantile establishments, including common carriers by vessels entering District, effect such result. *District of Columbia* v. *Smoot Sand & Gravel Corp.* (1951, 184 F. 2d 987, 87 U.S. App. D.C. 248, certiorari denied 71 S. Ct. 498, 340 U.S. 933, 95 L. Ed. 674).

Stock in trade

This section imposing on dealers in general merchandise a tax of one and one-half per centum on average stock in trade levies a tax not on title, but on merchandise, which is the stock in trade. *District of Columbia* v. *Bartz & King* (1957, 243 F. 2d 248, 100 U.S. App. D.C. 142).

Where merchandise was held by taxpayers under memorandum arrangement permitting them to display and hold it out for sale and transfer valid legal title to customer upon delivery without prior approval of the legal owners, the merchandise was part of the "stock in trade" of the taxpayers and subject to the District of Columbia tax on average stock in trade. *Id.*

Where merchandise was specially ordered by taxpayers for showing to an unidentified customer for which if not sold was returned to the supplier promptly on learning that the customer would not buy it, the merchandise did not become a part of the "stock in trade" of the taxpayers so as to be subject to this section imposing tax on stock in trade. *Id.*

§ 47–1213. Board of Personal Tax Appeals—Constitution—Proceedings.

The Board of Assistant Assessors hereinbefore provided for, with the assessor of the District of Columbia as chairman, shall compose a Board of Personal Tax Appeals, and as such Board of Personal Tax Appeals shall convene in a room, to be provided therefor by the said assessor, on the first Monday of September each year and shall continue in session to and including the first Monday of March of the following year, or until such time as their work shall have been completed, and public notice of the time and place of such meeting shall be given by advertisement for two consecutive secular days in two daily newspapers published in the District of Columbia. All appeals to said board shall be made within thirty days after notice of fixing an assessment. It shall be the duty of the Board of Personal Tax Appeals to hear all appeals made by any person or persons against the assessments made by the Board of Personal Tax Appraisers and to impartially equalize the value of said personal property as a basis for assessment. Any four members of the said board shall constitute a quorum for business, and in the absence of the assessor a temporary chairman shall be selected. They shall be empowered to diminish or increase such assessments as they may believe to have been returned at other than their true value to such amount as, in their opinion, may be the value thereof, and the action of said board in such cases shall be final. Said board of assistant assessors shall also perform such other official duties as may be required of them by the assessor of the District of Columbia: *Provided,* That in case the personal tax appraisers shall fail to complete any of the duties in sections 47–1201 to 47–1214, 47–1301 to 47–1305, 47–1701 to 47–1709 to be by them performed within the time provided therefor the taxation provided by this section shall not by reason thereof be invalid; but such appraisers shall proceed with all reasonable diligence to complete such duties, and their acts shall be valid as if performed within the time fixed therefor. If, at any time within any current year, property subject to taxation under the provisions of sections 47–1201 to 47–1214, 47–1301 to 47–1305, 47–1701 to 47–1709 shall have been omitted from assessment, said Board of Personal Tax Appraisers shall immediately proceed to assess the same for the then current year, giving notice in writing to the persons or corporations so assessed, who shall have a right of appeal within ten days from date of said notice. (July 1, 1902, 32 Stat. 620, ch. 1352, § 6, par. 11; July 3, 1926, 44 Stat. 834, ch. 759, § 7; Feb. 18, 1929, 45 Stat. 1228, ch. 259, § 7.)

AMENDMENTS

1929—Act Feb. 18, 1929, changed the time for convening and continuing in session in the first paragraph.

1926—Act July 3, 1926, added the second sentence of the first paragraph.

TRANSFER OF FUNCTIONS

The Board of Personal Tax Appeals was superseded by the Board of Tax Appeals, which was later designated as the District of Columbia Tax Court. See sections 47–2402 and 47–2403.

Transfer of functions of Assessor and Board of Assistant Assessors, see notes under §§ 47–601 and 47–604.

NOTES TO DECISIONS

Notice

The statute provides that notice must be given and the opportunity presented to be heard in respect to the assessment of omitted property. *Tumulty* v. *District of Columbia* (1939, 102 F. 2d 254, 69 App. D. C. 390).

The admission of the District that no such notice of the assessments was ever given to the company is fatal to the entire claim of the District. *Id.*

Reassessment

It is not the policy of the law to favor reassessments. Unless the taxing statute expressly provides for a reassessment, such action is void. *Hunt* v. *District of Columbia* (1940, 108 F. 2d 10, 71 App. D. C. 143).

When taxpayer complied with the duty and made a true statement of his investment in marginal stocks according to the legal requirement and was taxed on the item, the tax authorities could not reassess on a new basis on the theory that the shares of stock were omitted property, since omitted property means property which is not assessed at all and not property which is merely undervalued. *Id.*

§ 47–1214. Clerk of Board of Personal Tax Appraisers—Appointment.

The Commissioners of the District of Columbia are authorized and directed to appoint a clerk and assistant clerk to said Board of Personal Tax Appraisers, and three inspectors, all of whom shall perform such duties as may be assigned to them by the chairman of said board. (July 1, 1902, 32 Stat. 622, ch. 1352, § 6, par. 19.)

CODIFICATION

Provisions which prescribed the salaries of the employees were omitted as covered by the Classification Act of 1949, which has since been repealed by act Sept. 6, 1966, Pub. L. 89–554, § 8(a), 80 Stat. 632, and is now covered by section 305, chapter 51, subchapter III of chapter 53, and §§ 5341, 5342, 5504, 5509, and 7154 of title 5, U.S.C.

§ 47–1215. Taxation of rolling stock of railroad, sleeping-car, tank-car, etc., companies—Location within District—Location without District—Applicability of personal property tax laws—Effective date.

(a) The rolling stock of railroad companies, refrigerator-car companies, parlor-car companies, sleeping-car companies, tank-car companies, express companies, car-renting companies, and all other companies owning parlor, sleeping, dining, tank, freight, or any other cars which are operated or run over or upon the line or lines of any railroad or terminal company in the District of Columbia, shall be deemed to be located in said District for purposes of taxation, whether or not the individual units are continuously in the District or are constantly changing, and such property shall be reported, assessed, and taxed within the time, and at the rates prescribed by law for the reporting and taxation of other personal property in the District of Columbia.

(b) Such rolling stock as is primarily located in the District of Columbia shall be reported and taxed at its full and true value on the last day of the calendar year preceding the tax date.

(c) Such rolling stock as is not primarily located in the District of Columbia shall be reported and taxed in the manner following:

(1) Every railroad company operating rolling stock over or upon the line or lines of any railroad or terminal company in the District shall report to the Assessor of the District of Columbia the various classes of such rolling stock so operated by such company whether owned by it or any other railroad company; the number of miles traveled by each class of such rolling stock within the District during the calendar year next preceding the tax date; the total number of miles traveled by each class of such rolling stock on all lines over which such company operates during the calendar year next preceding the tax date; the total full and true value of each class of such rolling stock owned by such company on the last day of the calendar year next preceding the tax date; and such other facts and information as said assessor may require. The taxable portion of the rolling stock of each such company shall be determined by applying the mileage traveled in the District by the various classes of such rolling stock operated in the District by such company to the total mileage traveled by the various classes of such rolling stock on all lines over which such company operates, and the tax shall be assessed on that portion of such rolling stock owned by such company on the last day of the calendar year next preceding the tax date. The mileage and value of the rolling stock owned by such company which is permanently located outside of the District of Columbia shall not be included in the computation of such assessment.

(2) Every parlor-car company and sleeping-car company owning parlor and sleeping cars (except those owned by railroad companies and described in paragraph (1) of this subsection) which are operated in the District over or upon the tracks of any railroad or terminal company, shall report to the Assessor of the District of Columbia the total number of miles traveled by all such cars, and also the miles traveled by such cars within the District, during the calendar year next preceding the tax date; the total full and true value of all of such cars so used as of the last day of the calendar year next preceding the tax date; and such other facts and information as said assessor may require. The taxable portion of the value of the cars owned by any such company and used within the District shall be determined by applying to such value the ratio between the mileage traveled by such cars in the District and the total mileage traveled by such cars within and without the District.

(3) Every car company, mercantile company, corporation or individual (other than railroad, parlor-car and sleeping-car companies described in paragraphs (1) and (2) of this subsection) owning or leasing any stock cars, furniture cars, fruit cars, refrigerator cars, meat cars, oil cars, tank cars, or other similar cars, which are run over or upon the line or lines of any railroad or terminal company in the District of Columbia, shall furnish to the Assessor of the District of Columbia, on forms prescribed by said assessor, a true, full, and accurate statement, verified by the affidavit of the officer or person making the same, showing the aggregate number of miles made by their several cars over or upon the several lines of railroad within the District of Columbia during the calendar year next preceding the tax date; the average number of miles

traveled per day within the District of Columbia by the cars covered by the statement in the ordinary course of business during the year; and such other pertinent facts and information as said assessor may require.

Every railroad company whose lines run through or into the District of Columbia shall annually furnish to the said assessor a statement showing the name and address of every car company, mercantile company, corporation, or individual (other than railroad, parlor-car and sleeping-car companies described in paragraphs (1) and (2) of this subsection) whose cars made mileage over its tracks in the District of Columbia during the calendar year next preceding the tax date, and the total number of miles made within the District of Columbia by each during said period.

It shall be the duty of the said assessor to ascertain from the best and most reliable information that can be obtained and from said statements the number of cars required to make the total mileage of each such car company, mercantile company, corporation, or individual within the District of Columbia during the period aforesaid, and to ascertain and fix the valuation upon each particular class of such cars, and the number so ascertained to be required to make the total mileage within the District of Columbia of the cars of each such car company, mercantile company, corporation, or individual within said period shall be assessed against the respective car companies, mercantile companies, corporations, or individuals. The valuation thus obtained shall be the full and true value and shall be the taxable portion of the cars owned by any such car company, mercantile company, corporation, or individual and used within the District of Columbia.

(d) All of the provisions of law relating to the filing of returns, assessment, payment, and collection of personal property taxes in the District of Columbia shall be applicable to the companies described in the foregoing subsections.

(e) Any individual, partnership, unincorporated association, or corporation aggrieved by any assessment of taxes made pursuant to the provisions of this section may appeal therefrom to the Board of Tax Appeals for the District of Columbia in the same manner and to the same extent as set forth in sections 47–2403, 47–2404, 47–2407 to 47–2411.

(f) The provisions of this section shall be applicable to the taxable year beginning July 1, 1945, and each taxable year thereafter. (Dec. 15, 1945, 59 Stat. 610, ch. 579.)

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court, see § 47–2402.

Chapter 13.—ENFORCEMENT OF PERSONAL PROPERTY TAXES BY DISTRAINT OR LEVY

Sec.

47–1301. Distraint of property for nonpayment of taxes—Sale—Disposition of surplus.
47–1302. Sale of distrained goods for nonpayment of taxes.
47–1303. Penalties.
47–1304. Remedies for collection of intangible tax—Common-law and equitable remedies available for collection of all taxes and assessments.
47–1305. Sale of real estate to satisfy personal tax.

§ 47–1301. Distraint of property for nonpayment of taxes—Sale—Disposition of surplus.

When the taxes on personal property due and payable in each year shall not be paid as provided in section 47–1209, then and in that event the collector of taxes of the District of Columbia, or his deputy, may distrain sufficient goods and chattels found within the District of Columbia and belonging to the person, firm, association, corporation, company, administrator, executor, guardian, or trustee charged with such tax to pay the taxes remaining due, under the provisions of this law, from such person, firm, association, corporation, company, administrator, executor, guardian, or trustee, together with the penalty thereon and the costs that may accrue; and for want of such goods and chattels said collector of taxes may levy upon and sell at auction the estate and interest of such person, firm, association, corporation, company, administrator, executor, guardian, or trustee in any parcel of land in said District; and in the case of the levy on any estate or interest in land the proceedings subsequent to sale thereof shall be the same as provided by law in the case of sales for arrears of taxes against real estate; and in the case of distraint of personal property or the levy upon real estate as aforesaid the collector of taxes shall immediately proceed to advertise the same by public notice to be posted in the office of said collector and by advertisement, three times within one week, in one or more of the daily newspapers published in said District, stating the time when and the place where such property shall be sold, the last publication to be at least six days before the date of sale, and if the said taxes and penalty thereon, and the costs and expenses which shall have accrued thereon, shall not be paid before the day fixed for such sale, which shall not be less than ten days after said levy or taking of said property, the collector shall proceed to sell at public auction, such property, or so much thereof as may be needed to pay such taxes, penalty, and accrued costs and expenses of such distraint and sale. Said collector shall report in detail, in writing, every distraint and sale of personal property to the Commissioners of the District of Columbia or their successors in office, and his accounts in respect to every such distraint or sale shall forthwith be submitted to the auditor of the District of Columbia and be audited by him. Any surplus resulting from such sale over and above such taxes, costs, and expenses shall be paid into the Treasury, and upon being claimed by the owner or owners of the goods and chattels aforesaid shall be paid to him or them upon the certificate of the collector of taxes stating in full the amount of such excess. (July 1, 1902, 32 Stat. 621, ch. 1352, § 6, par. 12.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 3 of the Board of Commissioners dated Aug. 28, 1952, and effective Sept. 2, 1952, established under the direction and control of the Board of Commissioners the Department of General Administration headed by a Director; and transferred to the Director all functions of the Office of the Auditor and of the Office of the Collector of Taxes. Reorganization Order No. 19 established the Internal Audit Office, and transferred the function of auditing the accounts of the Collector of Taxes in respect to distraint or sale from the Auditor to the Internal Audit Officer. Reorganization Order No. 20

abolished the previously existing Office of the Collector of Taxes and transferred its functions to the Finance Office created by that order in the Department of General Administration. The Finance Office includes an Office of the Collector of Taxes. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCES

Distraint of goods of merchant entering District after June 30th for failure to pay taxes for balance of year, see § 47–1212.

Provisions of this chapter apply to collection of income taxes, see § 47–1527.

Special provisions concerning family dwellings, see §§ 47–901 to 47–906.

NOTES TO DECISIONS

In general

There is no provision in the statute for a lien on personal property; there is no provision of the statute to assess taxes on personal property when the owner is unknown; and there is no provision for the assessing of personal property taxes after the end of the current fiscal year. *Tumulty* v. *District of Columbia* (1939, 102 F. 2d 254, 69 App. D. C. 390).

Payment under protest

Where litigation, determining that trust companies were subject merely to tax of 4 per cent of their gross earnings after deduction of interest paid on savings deposits, had not been concluded at time they paid, under protest, gross earnings tax of 6 per cent, without deduction of interest paid on savings deposits; and they would have risked penalties of 1 per cent a month and summary distraint of their property by not paying, it could not be said that payments had been made "voluntarily," so as to preclude recovery. *District of Columbia* v. *American Security & Trust Co.* (1953, 202 F. 2d 21, 92 U.S. App. D.C. 33).

Property to be distrained

Any goods and chattels of the person charged with the taxes may be distrained. *Tumulty* v. *District of Columbia* (1939, 102 F. 2d 254, 69 App. D. C. 390).

§ 47–1302. Sale of distrained goods for nonpayment of taxes.

When the collector of taxes shall distrain any goods and chattels in order to enforce payment of such taxes, the goods and chattels so seized shall be kept in a safe and convenient place until the day of the sale thereof; and the sale of said goods and chattels shall be at public auction, at such place as the collector of taxes may designate: *Provided, however,* That no such goods and chattels shall be sold upon any bid not sufficient to meet the amount of tax, penalty, and costs; but in case the highest bid therefor is not sufficient to meet the amount of tax, penalty, and costs thereon, said property thereupon shall be bid off by the said collector of taxes in the name of and by the District of Columbia, and the Commissioners of the District of Columbia may sell the same at private sale to satisfy the tax penalty, and cost thereafter without further notice. (Apr. 28, 1904, 33 Stat. 564, ch. 1815.)

TRANSFER OF FUNCTIONS

The authority of the Commissioners of the District of Columbia to sell goods distrained for non-payment of taxes at private sale on failure to receive a sufficient bid at public sale was delegated to the Collector of Taxes, Finance Office, Department of General Administration by Reorganization Order No. 20, as amended Mar. 19, 1953. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

§ 47–1303. Penalties.

Any person or persons violating any of the provisions of sections 47–1201 to 47–1214, 47–1301 to 47–1305, and 47–1701 to 47–1709 shall be liable to a penalty of not exceeding five hundred dollars for each offense, said penalty to be imposed, upon conviction in the District of Columbia Court of General Sessions, as other fines and penalties are imposed, and said court is hereby invested with jurisdiction thereof; and in default of the payment of said penalty the person or persons so convicted shall be imprisoned, in the discretion of the court, not exceeding six months. (July 1, 1902, 32 Stat. 622, ch. 1352, § 6, par. 18; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 47–1304. Remedies for collection of intangible tax—Common-law and equitable remedies available for collection of all taxes and assessments.

The remedies provided in sections 47–1201 to 47–1214, 47–1301 to 47–1305, 47–1701 to 47–1709 for the collection of taxes on tangible personal property, shall be available also for the collection of taxes on intangible property.

In addition to the statutory remedies, all common-law and all equitable remedies shall also be available, either separately or concurrently with statutory remedies, as may be deemed advisable, for the collection of all taxes and special assessments of any kind whatsoever. (Feb. 18, 1929, 45 Stat. 1226, ch. 259, § 1.)

§ 47–1305. Sale of real estate to satisfy personal tax.

Where real estate is levied upon for the nonpayment of personal taxes of any kind, and the best price offered at an auction sale is not sufficient to pay taxes, interest, and penalties, said real estate may be sold under decree of the equity court as provided by law. (Feb. 18, 1929, 45 Stat. 1226, ch. 259, § 2.)

Chapter 14.—ENFORCEMENT OF PERSONAL PROPERTY TAXES BY ACQUISITION OF LIEN

Sec.

47–1401. Examinations and hearings by assessor—Examination of books—Proceedings in District of Columbia Court of General Sessions.
47–1402. Neglect or refusal to pay personal property taxes—Collection by distraint—Levy—Public notice of intended sale—Sale to be public—Report—Disposition of surplus above taxes.
47–1403. Surrender of property to collector unless subject to attachment.
47–1404. Liability for failure to surrender property.
47–1405. Exhibition of evidence or statements relating to subject of distraint—Penalty.
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47–1409. Remedies under this chapter considered additional.
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§ 47–1401. Examinations and hearings by assessor—Examination of books—Proceedings in District of Columbia Court of General Sessions.

The assessor of the District of Columbia or any person designated by him for the purpose of ascertaining the correctness of any return of personal property, tangible or intangible, for taxation or for the purpose of making a return where none has been made is authorized to examine any books, papers, records, or memoranda of any person bearing upon the matters required to be included in the return and may summon any person to appear before him and produce books, records, papers, or memoranda bearing upon the matters required to be included in the return and to give testimony or answer interrogatories under oath respecting the same, and the assessor, or assistant assessor, shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan police department. If any person, having been personally summoned, shall neglect or refuse to obey the summons issued as herein provided, then in that event the assessor, or any assistant assessor, may report that fact to the United States District Court for the District of Columbia, or one of the judges thereof, and said court or any judge thereof hereby is empowered to compel obedience to said summons to the same extent as witness may be compelled to obey the subpenas of that court. Any person in custody or control of any books, papers, records, or memoranda bearing upon the matters required to be included in such returns, who shall refuse to permit the examination by the assessor or any person designated by him of any such books, papers, records, or memoranda, or who shall obstruct or hinder the assessor or any person designated by him in the examination of any books, papers, records, or memoranda, shall upon conviction thereof be fined not more than $300. All prosecutions under this section shall be brought in the District of Columbia Court of General Sessions on information by the corporation counsel of the District of Columbia in the name of the District of Columbia. (Aug. 17, 1937, 50 Stat. 673, ch. 690, title I, § 1; May 16, 1938, 52 Stat. 356, ch. 223, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

AMENDMENT

1938—Act May 16, 1938, added the words "of any person" after the word "memoranda" the first time it appears, and the last two sentences.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "judge" and "judges" for "justice" and "justices", respectively.

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

SHORT TITLE

The opening sentence of act Aug. 17, 1937, provided: "That this Act [classified to this chapter and to sections 40–101 to 40–105, 47–1601 to 47–1629, 47–1801 to 47–1808, 47–1901 to 47–1903, 47–1905, 47–1907, 47–1908, 47–1911, and 47–2501 to 57–2504] divided into titles and sections may be cited as 'the District of Columbia Revenue Act of 1937.'"

CROSS REFERENCES

Collection of income taxes, applicability of chapter, see § 47–1527.

Enforcement of personal property taxes by distraint or levy, see § 47–1301 et seq.

NOTES TO DECISIONS

Constitutionality

In exercising its power to legislate for the District of Columbia, Congress acts as a legislature of national character and is not subject to constitutional limitations imposed on State legislatures, and, therefore, this chapter is not invalid as a violation of the commerce clause or the 14th amendment. *Neild* v. *District of Columbia* (1940, 110 F. 2d 246, 71 App. D. C. 306).

This chapter is an exercise of the power of Congress to legislate for the District of Columbia and not an exercise of its power to regulate commerce, and, therefore, is not invalid on the theory that the burden imposed must be uniform throughout the Nation, or that the exercise of this power is improvident. *Id.*

Lien for delinquent taxes

Congress took notice of the problem of taxes on personalty and among other things provided a method for the obtainment of a lien against a taxpayer delinquent in the payment of personal property taxes. *Tumulty* v. *District of Columbia* (1939, 102 F. 2d 254, 69 App. D. C. 390).

Power to tax

The delegation to Congress of power to exercise exclusive legislation in all cases over the District of Columbia, includes the power to tax. *Neild* v. *District of Columbia* (1940, 110 F. 2d 246, 71 App. D. C. 306).

§ 47–1402. Neglect or refusal to pay personal property taxes—Collection by distraint—Levy—Public notice of intended sale—Sale to be public—Report—Disposition of surplus above taxes.

If any person liable to pay any personal property tax to the District of Columbia neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector of taxes for the District of Columbia, or any person designated by him, to collect the said taxes, with interest and penalties thereon, by distraint and sale in the manner hereinafter provided, of the goods, chattels, or effects, including stocks, securities, bank accounts, evidences of debt, and credits of the person delinquent as aforesaid. In case of such neglect or refusal of the person delinquent as aforesaid the collector, or the person designated by him, may levy upon all such property and rights to such property belonging to such person for the payment of the sum due with interest and penalties thereon and the costs that may accrue and the collector of taxes shall immediately proceed to advertise the same by public notice to be posted in the office of said collector and by advertisement three times in one week in one or more daily newspapers in said District, stating the time when and the place where such property shall be sold, the last publication to be at least six days before the date of sale and if the said taxes, with

interest and penalties thereon, and the costs and expenses which shall have accrued thereon, shall not be paid before the date fixed for such sale, which shall not be less than ten days after said levy or taking of said property, the collector shall proceed to sell at public auction such property or interest therein or so much thereof as may be needed to pay such taxes, interest, penalties, and accrued costs and expenses of such distraint and sale. Said collector shall report in detail in writing every distraint and sale of personal property to the Commissioners of the District of Columbia, and his accounts in respect of every such distraint or sale shall forthwith be submitted to the auditor of the District of Columbia and shall be audited by him. Any surplus resulting from such sale over and above such taxes, interest, penalties, costs, and expenses shall be paid into the Treasury of the United States to the credit of the District of Columbia, and upon being claimed by the owner or owners of the property aforesaid shall be paid to him or them by the accounting officers of said District upon the certificate of the collector of taxes stating in full the amount of such excess. (Aug. 17, 1937, 50 Stat. 673, ch. 690, title I, § 2.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 19 of Nov. 10, 1952, established the Internal Audit Office headed by an Internal Audit Officer in the Department of General Administration. Under this order the functions of the Auditor described in this section relating to the auditing of accounts of the Collector of Taxes in respect to distraint or sale were transferred to the Internal Audit Officer. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCES

Enforcement of personal property taxes by distraint or levy, see § 47–1301 et seq.

Time for payment, delinquency, see § 47–1209.

NOTES TO DECISIONS

Injunction to prohibit sale

Where plaintiff in action to enjoin sale of furniture and personal effects for property taxes had only a lien on property, so that plaintiff's claims furnished no basis for saying distraint was illegal, and Collector of Taxes had given assurances that sale would be subject to outstanding liens, sale would not be enjoined. *Pearson* v. *Laughlin* (1951, 190 F. 2d 658, 89 U.S. App. D.C. 130).

Offer of payment

Where holder of liens on household furniture and personal effects offered to give collector of taxes an uncertified check for taxes assessed against personalty, but there was no offer to pay interest or expenses, and offer was made on non-business day, over telephone, while trucks and men were at hand to move personalty to auction rooms, and during preceding business week lien holder had asserted existence of his outstanding liens on personalty, and had subsequently asserted absolute ownership in himself, and at no time during such week had lien holder tendered payment of taxes, collector was justified in refusing to stay orderly course of collection proceedings, and refusal of Collector to accept offer did not preclude sale of personalty for taxes. *Pearson* v. *Laughlin* (1951, 190 F. 2d 658, 89 U.S. App. D.C. 130).

§ 47–1403. Surrender of property to collector unless subject to attachment.

Any person in possession of property or rights to property subject to distraint upon which a levy has been made shall, upon demand by the collector, or the person designated by him, surrender such property or rights to such collector or the person designated by him, unless such property or right is at the time of such demand subject to an attachment or execution under any judicial process. (Aug. 17, 1937, 50 Stat. 674, ch. 690, title I, § 3.)

§ 47–1404. Liability for failure to surrender property.

Any person who fails or refuses so to surrender any of such property or rights shall be liable in his own person and estate to the District of Columbia in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes including interest and penalties for the collection of which such levy has been made, together with costs and interest thereon, from the date of such levy. (Aug. 17, 1937, 50 Stat. 674, ch. 690, title I, § 4.)

§ 47–1405. Exhibition of evidence or statements relating to subject of distraint—Penalty.

All persons and officers of companies and corporations are required, on demand of the collector, or the person designated by him, about to distrain or having distrained on any property or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint or the property or rights of property liable to distraint for the tax due. A violation of this section shall be punished by a fine of not exceeding $500 or by imprisonment not exceeding thirty days, or both, in a prosecution filed in the District of Columbia Court of General Sessions by the corporation counsel of the District in the name of the District of Columbia. (Aug. 17, 1937, 50 Stat. 674, ch. 690, title I, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Muncipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 47–1406. Certificates of delinquent personal tax—Filing—Lien—Enforcement.

In case of the neglect or refusal of any person to pay a personal-property tax within ten days after notice and demand, the collector of taxes, or the person designated by him, may file a certificate of such delinquent personal tax with the Recorder of Deeds of the District of Columbia, which certificate from the date of its filing shall have the force and effect, as against the delinquent person named in such certificate, of the lien created by a judgment granted by the United States District Court for the District of Columbia, which lien shall remain in force and effect until the taxes set forth in said certificate, with interest and penalties thereon, shall be paid and said lien may be enforced by a bill in equity filed in the United States District Court for the District of Columbia. (Aug. 17, 1937, 50 Stat. 674, ch. 690, title I, § 6; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 266, Pub. L. 89–493, § 18.)

AMENDMENT

1966—Act of July 5, 1966, substituted "Recorder of Deeds of" for "clerk of the United States District Court

for"; and substituted "the United States District Court for the District of Columbia" for "said court".

CHANGE OF NAME

Act of June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1–504.

CROSS REFERENCES

One form of action in United States district courts, to be known as a civil action, see rule 2 of Fed. Rules of Civ. Proc., 28 U.S.C. App.

Time for payment, delinquency, see § 47–1209.

NOTES TO DECISIONS

Priority of lien

District of Columbia had a lien which arose and existed on date District income taxes were withheld or were required to be withheld by employer, and lien had priority over other claims, such as claim for unpaid rent, even though District had not filed a certificate of delinquent taxes. *District of Columbia* v. *Hechinger Properties Co.* (D.C. App. 1964, 197 A. 2d 157).

§ 47–1407. Wrongful distraints—Recoveries.

When a recovery is had in any suit or proceeding against the collector of taxes, or any person designated by him, under this Act for a wrongful distraint or any other act done by him or for the recovery of any money exacted by or paid to him and by him paid into the Treasury of the United States in the performance of his official duty and the court certifies that there was probable cause for the act done by the collector or the person designated by him or that he acted under the directions of the Commissioners of the District of Columbia, no execution shall issue thereon, but the amount so recovered shall, upon final judgment, be paid by the District of Columbia in the same manner as judgments against the said District are paid. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title I, § 7.)

REFERENCES IN TEXT

This Act, referred to in the text, means the District of Columbia Revenue Act of 1937, act Aug. 17, 1937. For classification of such act in this Code, see Short Title note under § 47–1401.

NOTES TO DECISIONS

Civil liability

If in performance of his official duties the Collector of Taxes for the District of Columbia misinterpreted the statute authorizing collection, he is not subject to a civil liability for injury resulting from such act. *Goldstein* v. *Pearson* (D.C. Mun. App. 1956, 121 A. 2d 260).

Taxpayers were not entitled to recovery of damages for injuries allegedly suffered by them as result of erroneous levy of taxes by the Collector of Taxes, since the Collector is a public official charged with the duty of collecting taxes and is not subject to civil liability for injury resulting from an alleged misinterpretation of the statute. *Id.*

§ 47–1408. Time for assessment of tax—False returns—Delinquency.

(a) Except as provided in subsection (b) of this section the taxes imposed upon personal property shall be assessed or reassessed within three years after the return was filed. For the purposes of this subsection, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(b) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the taxes may be assessed at any time.

(c) Where the assessment of personal property taxes has been made within the period properly applicable thereto, such taxes may be collected by distraint or by a proceeding in court, but only if begun within three years after the date of the assessment of such taxes. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title I, § 8; May 16, 1938, 52 Stat. 357, ch. 223, § 1(b); July 10, 1952, 66 Stat. 543, ch. 649, § 1.)

AMENDMENTS

1952—Act July 10, 1952, amended section generally. Prior to such amendment, section read as follows: "Taxes on property reported in any return filed by a taxpayer shall be assessed within two years after the filing of such return; and such taxes may be collected by distraint or by proceeding in court within three years after the date of assessment of such taxes. In the case of a false or incorrect return, whether in good faith or otherwise, or of a failure to file a return within the time prescribed by law or of a failure to include taxable property or assets belonging to the taxpayer in any return filed by such taxpayer, whether in good faith or otherwise, the tax may be assessed at any time, and the tax may be collected by distraint or by proceeding in court within three years after the assessment of such tax."

1938—Act May 16, 1938, amended section generally. Prior to such amendment, section read as follows: "The taxes to which this title relates shall be assessed within four years after such taxes became due and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of five years after such taxes became due. In the case of a false or fraudulent return with intent to evade tax, or of a failure to file a return within the time required by law, the tax may be assessed or a proceeding in court for the collection of such tax may be begun without assessment at any time. Where the assessment of any tax to which this title relates has been made within such statutory period of limitation, such tax may be collected by distraint or by a proceeding in court only if begun within six years after the assessment of the tax."

NOTES TO DECISIONS

Additional assessments

Under this section and section 47–1409, an additional assessment of business privilege tax could properly be made after tax year during which tax was assessed and paid, the same as additional assessments of intangible personal property taxes could be made after tax years in which they were assessed and paid, and the Board of Tax Appeals had authority to affirm, cancel, reduce, or increase assessments. *Maryland & Virginia Milk Producers' Ass'n* v. *District of Columbia* (1941, 119 F. 2d 787, 73 App. D. C. 399, certiorari denied 62 S. Ct. 87, 314 U. S. 646, 86 L. Ed. 518).

A taxpayer had no "vested right" in the fruits of incorrect or incomplete returns made for intangible personal property tax purposes for fiscal years ended on June 30 in 1936, 1937, and 1938, and this section and section 47–1409 and additional assessments made under their authority in August 1938, imposed no new taxes but merely provided a new remedy in addition to remedies available, as against contention that, because taxpayer made returns and paid during fiscal years in question taxes assessed during those years, assessors could not after those years make additional assessments. *Id.*

Incorrect returns

Where District Board of Tax Appeals concluded, on basis of findings supported by evidence, that corporation's personal property tax returns for years involved in determining whether assessments of such property were

barred by statute of limitations were incorrect, assessments were not barred. *District of Columbia* v. *Smoot Sand & Gravel Corp.* (1959, 184 F. 2d 987, 87 U.S. App. D.C. 248, certiorari denied 71 S. Ct. 498, 340 U.S. 933, 95 L. Ed. 674).

Limitations

This section authorizing District of Columbia taxes against personal property to be collected by distraint if begun within three years after the date of assessment, means that no distraint or proceeding in court for collection of the taxes shall be begun after three years from the date of the assessment. *Goldstein* v. *Pearson* (D.C. Mun. App. 1956, 121 A. 2d 260).

Filing of a claim in bankruptcy of taxpayer for delinquent personal property taxes while constituting a "proceeding in court" within this section authorizing taxes to be collected by distraint or by a proceeding in court begun within three years after date of assessment, terminated when the bankrupt was discharged and the case was closed as a "no asset" case and an attempt to collect the taxes by distraint and after the allowable period had passed, was unauthorized. *Id.*

§ 47–1409. Remedies under this chapter considered additional.

The remedies provided by this chapter for the collection of personal property taxes are in addition to any other remedies available for the collection of said taxes. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title I, § 9.)

§ 47–1410. Failure to file return—Penalty.

Any person required to file a return or schedule, by the terms of an Act entitled "An Act making appropriation to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1903, and for other purposes," approved July 1, 1902, as amended, who shall fail or refuse to file the same within the time required by said Act as amended shall, upon conviction thereof, be fined not more than $300 for each and every failure or refusal and each and every day that such failure or refusal continues shall constitute a separate and distinct offense. All prosecutions under this section shall be brought in the District of Columbia Court of General Sessions on information by the corporation counsel of the District of Columbia in the name of the District of Columbia. The penalty herein provided shall be in addition to the other penalties provided in said Act of July 1, 1902, as amended. (Aug. 17, 1937, ch. 690, title I, § 10, as added May 16, 1938, 52 Stat. 357, ch. 223, § 1(c), and amended Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

REFERENCES IN TEXT

The Act of July 1, 1902, as amended, referred to in the text, appears in this code as §§ 1–237, 7–211, 7–507, 11–206, 22–702, 22–1208, 26–318, 28–2701, 35–105, 43–1105, 47–119, 47–121, 47–211, 47–604, 47–605, 47–709, 47–801, 47–802, 47–1001 to 47–1009, 47–1201, 47–1203, 47–1207 to 47–1209, 47–1212 to 47–1214, 47–1301 to 47–1303, 47–1701 to 47–1704, 47–1706 to 47–1709, 47–2301 to 47–2350.

CHANGE OF NAME

"Muncipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 47–1411. Definitions.

As used in this chapter—

(a) The term "person" includes any individual, firm, copartnership, joint adventure, association, corporation (domestic or foreign), trust, trustee, estate, or receiver.

(b) The term "return" means any return required to be filed by this title. (Aug. 17, 1937, ch. 690, title I, § 11, as added May 16, 1938, 52 Stat. 357, ch. 223, § 1(c).)

NOTES TO DECISIONS

Trustee in bankruptcy

A trustee in bankruptcy is such a "person" as is bound to make and deliver a return on personalty in his hands, under this chapter providing for taxation of all tangible personalty and all general merchandise or stock in trade owned or held in trust or otherwise. *Brown, Trustee in Bankruptcy etc.* v. *Collector of Taxes for the District of Columbia* (1957, 247 F. 2d 786, 101 U.S. App. D.C. 200).

§ 47–1412. Secrecy of returns.

Except in accordance with proper judicial order and as otherwise provided by law, it shall be unlawful for the Commissioners of the District of Columbia or any persons having an administrative duty under this chapter to divulge or make known in any manner any information contained in any return required under this chapter. The persons charged with the custody of such returns shall not be required to produce any of them in any action or proceeding in any court except on behalf of the United States or the District of Columbia or on behalf of any party to any action or proceeding under the provisions of this chapter, when the returns or facts shown thereby are directly involved in such action or proceeding in either of which events the court may require the production of and may admit in evidence so much of such returns or the facts shown thereby as are pertinent to the action or proceeding, and no more. Nothing herein contained shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return filed by him in connection with his tax, nor prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the corporation counsel of the District of Columbia or any of his assistants of the return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted for the collection of a tax or penalty and failure to file any return or schedule required by law. Any violator of the provisions of this section shall be subject to the punishment provided by section 47–1410. (Aug. 17, 1937, ch. 690, title I, § 12, as added May 16, 1938, 52 Stat. 357, ch. 223, § 1(c).)

Chapter 15.—INCOME AND FRANCHISE TAXES

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SUBCHAPTER I.—INCOME TAX FOR TAXABLE YEARS PRIOR TO JANUARY 1, 1947

REPEAL OF SUBCHAPTER

Act July 16, 1947, 61 Stat. 331, ch. 258, Art. I, title I, § 1, repealed this subchapter with respect to taxable years or portions thereof beginning on and after the first day of January, 1947, for all purposes, except the following purposes in connection with taxes due or accrued under this subchapter:

(a) For the imposition of assessments and penalties, civil and criminal, for the violation of or failure to comply with any provisions of this subchapter and the regulations thereunder;

(b) For requiring the making, filing, and submission of returns and reports required by this subchapter;

(c) For the examination of all books, records, and other documents, and witnesses;

(d) For the assessment and collection of the taxes imposed by this subchapter, and the filing of liens therefor; and

(e) For the allowance of refunds of overpayments of any taxes assessed under the provisions of this subchapter.

For present provisions covering income and franchise taxes for taxable years after January 1, 1947, see § 47–1551 et seq.

§ 47–1501. Application of subchapter.

The provisions of this subchapter shall apply to the taxable year 1939 and succeeding taxable years, except that in the case of a taxable year beginning in 1938 and ending in 1939 the income taxable under this subchapter shall be that fraction of the income for the entire fiscal year equal to the number of days remaining in the fiscal year after January 1, 1939, divided by three hundred and sixty-five: *Provided, however*, That if the taxpayer's records properly reflect the income for that part of the fiscal year falling in the calendar year 1939, then the portion of the fiscal year's income taxable hereunder shall be the portion received or accrued during the calendar year 1939. (July 26, 1939, 53 Stat. 1087, ch. 367, title II, § 1.)

SHORT TITLE

The opening paragraph of Title II of act July 26, 1939, provided in part that this subchapter may be cited as the "District of Columbia Income Tax Act."

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding this section.

CROSS REFERENCE

Federal income tax law, see Internal Revenue Code, see, 26 U.S.C. § 1 et seq.

§ 47–1502. Imposition of tax rate—Individuals—Corporations—Taxable income—Exemptions.

(a) *Tax on individuals.*—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:

One per centum on the first $5,000 of taxable income.

One and one-half per centum on the next $5,000 of taxable income.

Two per centum on the next $5,000 of taxable income.

Two and one-half per centum on the next $5,000 of taxable income.

Three per centum on the taxable income in excess of $20,000.

(b) *Tax on corporations.*—There is hereby levied for each taxable year upon the taxable income from District of Columbia sources of every corporation, whether domestic or foreign (except those organizations expressly exempt under paragraph (d) of this section), a tax at the rate of 5 per centum thereof: *Provided, however*, That income derived from the procurement of orders for the sale of personal property by means of telephonic communication, written correspondence, or solicitation by salesmen in the District where such orders require acceptance without the District before becoming binding on the purchaser and seller and title to such property passes from the seller to the purchaser without the District is not from District of Columbia sources: *Provided further*, That income from the sale of personal property to the United States is not from District of Columbia sources, unless the taxpayer is engaged in business in the District and such property is delivered for use within said District.

(c) *Definition of "taxable income."*—As used in this section, the term "taxable income" means the amount of the net income in excess of the credits against net income provided in section 47–1509.

(d) *Exemptions from tax.*—The following organizations shall be exempt from taxation under this subchapter:

(1) Labor organizations;

(2) Fraternal beneficiary societies, orders, or associations, (A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and (B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association, or their dependents;

(3) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(4) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation;

(5) Business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(6) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes;

(7) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder;

(8) Farmers' associations organized and operated on a cooperative basis exempt from income tax under sections 101 (12) and (13) of the Internal Revenue Code;

(9) Banks, insurance companies, building and loan associations, and companies, incorporated or otherwise, which guarantee the fidelity of any individual or individuals, such as bonding companies, which pay taxes on their gross earnings, premiums, or gross receipts under existing laws of the District of Columbia;

(10) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this subchapter;

(11) Corporations organized under Act of Congress, if such corporations are instrumentalities of the United States and if, under such Act, as amended and supplemented, such corporations are exempt from Federal income taxes;

(12) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (A) no part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (B) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(13) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (A) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (B) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

(July 26, 1939, 53 Stat. 1087, ch. 367, title II, § 2; July 2, 1940, 54 Stat. 734, ch. 524, title II; Feb. 2, 1942, 56 Stat. 42, ch. 33, § 1 (a); June 22, 1942, 56 Stat. 376, ch. 433, § 1.)

REFERENCES IN TEXT

Sections 101 (12) and (13) of the Internal Revenue Code, referred to in subsec. (d)(8), means sections 101 (12) and (13) of the Internal Revenue Code of 1939.

AMENDMENTS

1942—Subsec. (b) amended by act June 22, 1942, which added the provisos.

Subsec. (d) amended generally by act Feb. 2, 1942. Prior to such amendment, subsection read as follows: "There shall be exempt from taxation under this title the following organizations: Corporations, including any community chest, funds, foundation, cemetery association, teachers' retirement fund association, church, or club, organized and operated exclusively for religious, charitable, scientific, literary, educational, or social purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and labor organizations, trade associations, boards of trade, chambers of commerce, citizens' associations, or organizations, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual, farmers' associations organized and operated on a cooperative basis exempt from income tax under section 101 (12) and (13) of the Internal Revenue Code; banks, insurance companies, building and loan associations, and companies, incorporated or otherwise, which guarantee the fidelity of any individual or individuals, such as bonding companies, all of which pay taxes upon gross premiums or earnings under existing laws of the District of Columbia; voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (1) no part of their net earnings inures (other than such payments) to the benefit of any private shareholder or individual, and (2) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses; and corporations organized under Act of Congress, if such corporations are instrumentalities of the United States."

1940—Subsec. (d) amended by act July 2, 1940, which exempted farmers' associations organized and operated on a co-operative basis exempt from income tax under section 101 (12) and (13) of the Internal Revenue Code.

EFFECTIVE DATE OF 1942 AMENDMENTS

Section 4(a) of act June 22, 1942, provided that: "The amendment made by section 1 of this Act [to this section] shall be effective with respect to taxable years beginning after December 31, 1941."

Section 2 of act Feb. 2, 1942, provided that: "The provisions of section 1 of this Act [adding sections 47–1544 to 47–1547 and amending this section and sections 47–1504, 47–1505, 47–1515, 47–1516, 47–1519, 47–1523, 47–1524, 47–1526, 47–1538, 47–1541, 47–1542, and 47–1543] shall apply to the taxable year 1941, and succeeding taxable years, except that the provisions of subsection (q) there-

of [adding section 47–1546] requiring licenses for corporations, and the provisions of subsection (e) thereof [amending section 47–1516] eliminating the requirement of payment of a fee for filing corporation returns shall become effective January 1, 1942."

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

NOTES TO DECISIONS

Burden of proof

Under subsection (a) of this section, the taxing authority is warranted in treating as prima facie taxable any person quartered in the District on tax day whose status is deemed doubtful, and it is not an unreasonable burden on the individual to require him to establish domicile elsewhere if he is to escape the tax. *District of Columbia* v. *Murphy* (1942, 61 S. Ct. 303, 314 U.S. 441, 86 L. Ed. 329).

A person who has at any time become domiciled in the District of Columbia has the burden of establishing a change of status upon which he relies to escape the income tax imposed by subsection (a) of this section. *Id.*

Domicile—In general

To ascertain the meaning of the word "domicile" as used in subsection (a) of this section, the Supreme Court would consider the congressional history of the section, the situation with reference to which it was enacted, the existing judicial precedents with which the Congress might be taken to have been familiar in at least a general way, and the unusual character of the national capital. *District of Columbia* v. *Murphy* (1942, 62 S. Ct. 303, 314 U.S. 441, 86 L. Ed. 329).

A person does not acquire a "domicile" in the District of Columbia, within subsection (a) of this section, simply by coming to the District to live for an indefinite period of time while in the government service. *Id.*

Under subsection (a) of this section, Congress did not intend that a person living in the District indefinitely while in the government service should be held to have acquired a "domicile" in the District simply because he does not maintain a domestic establishment at his former place of abode. *Id.*

Subsection (a) of this section was not intended to lay a tax only on those persons having an affirmative intent to remain in the District for the rest of their days. *Id.*

A person in government employment does not acquire a "domicile" in the District of Columbia so as to be subject to income tax there simply by coming into the District to live for an indefinite period of time, and whatever the motive inducing change of domicile, to effect a change there must be the absence of a present intention of not residing in the District permanently or indefinitely. *Beedy* v. *District of Columbia* (1942, 126 F. 2d 647, 75 U.S. App. D.C. 289).

—— Determination

Exercise of political rights elsewhere cannot be considered as meant to be conclusive on the issue of taxability in the District of Columbia under subsection (a) of this section. *District of Columbia* v. *Murphy* (1942, 62 S. Ct. 303, 314 U.S. 441, 86 L. Ed. 329).

Whether or not a person votes where he claims domicile is highly relevant, but by no means controlling on the question whether he is domiciled in the District of Columbia within subsection (a) of this section, nor is failure to vote elsewhere conclusive that domicile is in the District. *Id.*

In determining whether a person is domiciled in the District of Columbia within subsection (a) of this section, the nature of the position which brings a person to or keeps him in the service of the government is of great significance, the manner of living in the District, taken in consideration with the person's station in life, and all facts which go to show the relations retained to the former place of abode are relevant, and the question whether taxes similar in character to those laid by this section have been paid elsewhere should also be considered. *Id.*

To hold taxable a person who contends that he is not domiciled in the District of Columbia within subsection (a) of this section, the Board of Tax Appeals of the District need not find the exact time when the attitude and relationship of person to place which constitutes "domicile" were formed, so long as it finds they were formed before the tax day, nor need the board find just when the intent to return to the place of former abode was finally dissipated, but it is enough for the board to find that that has happened before the tax day. *Id.*

Evidence was insufficient to sustain finding of Board of Tax Appeals of District of Columbia that petitioners had abandoned former domicile in Massachusetts and had acquired domicile in District of Columbia and were subject to District of Columbia income taxes for the years 1939 and 1940. *Butler* v. *District of Columbia* (1946, 153 F. 2d 617, 80 U.S. App. D.C. 310).

Evidence that petitioner after ending his congressional career in 1935 made a professional connection with a law firm in the District of Columbia intending to remain in Washington for a limited time only, and to spend the remainder of his life in Maine, that he maintained a room and part of his wardrobe in Portland, Maine, and returned there several times a year and regularly during summer vacations, and that he paid all applicable taxes including a poll tax in Maine, and regularly voted there, showed that petitioner had his "domicile" in Maine and not in the District of Columbia, and hence he was not subject to District of Columbia income tax. *Beedy* v. *District of Columbia* (1942, 126 F. 2d 647, 75 U.S. App. D.C. 289).

In determining whether a person is domiciled in the District of Columbia and so subject to income tax there, or in his place of origin, there must be a conjunction of physical presence and animus manendi in the new location to bring about a domiciliary change. *Id.*

—— Intention to return to former domicile

Persons who live in the District of Columbia, and have no fixed and definite intent to return and make their homes where they were formerly domiciled, acquire a "domicile" in the District within subsection (a) of this section, and, to keep from acquiring a domicile in the District, the intention to return must be fixed, though the date need not be, and must be unconditional, though the time may be contingent. *District of Columbia* v. *Murphy* (1942, 62 S. Ct. 303, 314 U.S. 441, 86 L. Ed. 329).

Under subsection (a) of this section, a person who comes to the District to enter government service, to retain his former domicile, must always have a fixed and definite intent to return and take up his home there when separated from the service, and a mere sentimental attachment will not hold the old domicile nor is residence in the District with a nearly equal readiness to go back where one came from or to any other community offering advantages upon the termination of service enough. *Id.*

On the question of the taxability of an individual's income under subsection (a) of this section the individual's testimony with regard to his intention to return to his former place of abode should be given full and fair consideration, but it is subject to the infirmity of any self-serving declaration. *Id.*

For District of Columbia income tax purposes, a person in government employ here does not retain his former domicile unless he has a fixed and definite intent to return to it, since without any intent one way or the other, he is domiciled here if he is here. *Arbaugh* v. *District of Columbia* (1949, 176 F. 2d 28, 85 U.S. App. D.C. 97).

Where civil service employee came to District of Columbia to live for an indefinite period of time while in government service and for no other reason and, so far as evidence showed, he had a fixed intention to return to New Hampshire, only the date being indefinite, he did not have a domicile in the District of Columbia for income tax purposes. *Collier* v. *District of Columbia* (1947, 161 F. 2d 649, 82 U.S. App. D.C. 145).

The Court in determining whether taxpayer, who was concededly domiciled in Maine until January 1, 1935, was domiciled in the District of Columbia in 1939 so as to be subject to District of Columbia income tax, would follow a ruling of the Supreme Court placing the burden on an individual quartered in the District of establishing domicile elsewhere to escape the tax, and making the question of domicile one of fixed and definite intent to return and take up his home at the place of origin. *Beedy* v. *District of Columbia* (1942, 126 F. 2d 647, 75 U.S. App. D.C. 289).

Intent of Congress

Congress must be presumed to have passed this subchapter imposing tax on income from District of Columbia "sources" in the light of the established principle that unless a different legislative intention appears, the geographical source of income from the manufacture and sale of purchase and sale of goods is in the jurisdiction where the sale is made. *Eastman Kodak Co.* v. *District of Columbia* (1943, 131 F. 2d 347, 76 U.S. App. D. C. 339).

Presumptions

The place where a man lives is properly taken to be his "domicile" until facts adduced establish the contrary. *District of Columbia* v. *Murphy* (1942, 62 S. Ct. 303, 314 U.S. 441, 86 L. Ed. 329).

Question of fact

Under subsection (a) of this section, the question of domicile is a question of fact to be settled only by a realistic and conscientious review of the many relevant indicia of where a man's home is, and according to the established modes of proof. *District of Columbia* v. *Murphy* (1942, 62 S. Ct. 303, 314 U.S. 441, 86 L. Ed. 329).

Whether a Treasury Department employee who maintained his status as a registered voter in Michigan and voted in elections and primaries there, and a chief clerk of the Personnel and Organization Division of the National Guard Bureau with offices in Washington who was born and reared in Pennsylvania and paid poll and occupational taxes and voted in Pennsylvania, were domiciled in the District of Columbia within subsection (a) of this section, presented "questions of fact" to be settled by the Board of Tax Appeals for the District, and did not call for rulings of nontaxability as a matter of law because of a decision of the United States Court of Appeals for the District of Columbia. *Id.*

Sources of income

Where parent corporation's entire income consisted of dividends from three subsidiary corporations, all of which (1) were organized under District of Columbia law, (2) had their principal offices and businesses in District, and (3) were engaged in business therein, parent corporation received its income from "sources" within the District and was therefore subject to income and franchise taxes, and it was immaterial that some of business of subsidiaries was done elsewhere, since court was not concerned with sources of their income but only with sources of parent corporation's income. *Consolidated Title Corp.* v. *Dist. of Columbia* (1960, 275 F. 2d 885, 107 U.S. App. D.C. 221).

Corporate motion picture producer receiving percentage of money paid by District of Columbia film exhibitors to producer's wholly owned subsidiary for privilege of exhibiting producer's films in District must pay income tax on money so received by virtue of subsection (b) of this section imposing tax on income of corporation from District sources, whether relation of producer and subsidiary under contract between them was that of joint adventure, lease or employment, since in any event, the money was income derived from sources within the district. *Warner Bros. Pictures* v. *District of Columbia* (1948, 168 F. 2d 157, 83 U.S. App. D.C. 158).

A condition that credit of purchaser be approved without District of Columbia before order solicited by salesman in District be filled required "acceptance without the district" before becoming binding on seller within proviso of subsection (b) of this section excluding income from sources without the District in computing income taxes. *District of Columbia* v. *H. D. Lee Co.* (1947, 161 F. 2d 646, 82 U.S. App. D.C. 136, certiorari denied 68 S. Ct. 63, 332 U.S. 760, 92 L. Ed. 346).

Under written contract entered into by taxpayer, which was a New Jersey corporation maintaining a branch office but no warehouse or stock of merchandise in District of Columbia, with one to act as its wholesale distributor in District, the title to goods passed from taxpayer to distributor when delivery was made by taxpayer to carrier outside of the District, so that the sales made to distributor were not required to be reported as gross income from sources within the District, notwithstanding that taxpayer agreed to pay cost of transportation and reserved the right to select the carrier. *Electric Storage Battery Co.* v. *District of Columbia* (1946, 155 F. 2d 867, 81 U.S. App. D.C. 135).

Unless a different legislative intention appears, geographical "source" of income from the manufacture and sale or purchase and sale of goods is in the jurisdiction where the sale is made. *Eastman Kodak Co.* v. *District of Columbia* (1943, 131 F. 2d 347, 76 U.S. App. D.C. 339).

That from an economic point of view a large portion of income was attributable to activities which took place outside the District of Columbia was not material to the question whether the income came from "sources" within the District within this section taxing income from District of Columbia sources. *Id.*

Taxable income

Where taxpayer's laundry plant was located in Virginia and many of its customers were located in the District of Columbia and to some of its customers it supplied its own articles which it cleaned and laundered and picked up and delivered and such work was performed outside the District, it was not "work done and services performed" in the District within the income tax statute and the charges therefor were not apportionable or allocable to the District in calculating income taxes. *Industrial Coverall Laundry Corp.* v. *District of Columbia* (1951, 188 F. 2d 669, 88 U.S. App. D.C. 266).

Where taxpayer had a laundry plant in Virginia and many of its customers were located in the District of Columbia and to some customers, taxpayer furnished a supply of its own articles each week for a consideration with pick up and delivery service and the cleaning thereof was done in the plant in Virginia, source of income from the arrangement was the use or rental of the articles with pick up and delivery incidental thereto and in addition the cleaning and laundry, the latter being service and the income fairly attributable to the use or rental of the articles should be allocated to the District, in calculating income tax. *Id.*

§ 47–1503. Net income.

The term "net income" means the gross income of a taxpayer less the deductions allowed by this subchapter. (July 26, 1939, 53 Stat. 1088, ch. 367, title II, § 3.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1504. Gross income and exclusions therefrom.

(a) *Definition.*—The words "gross income," as used in this subchapter include gains, profits, and income derived from salaries, wages, or compensation for personal services of whatever kind and in whatever form paid, including salaries, wages, and compensation paid by the United States to its officers and employees to the extent the same is not immune from taxation under the Constitution, or income derived from professions, vocations, trades, businesses, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership, or use of, or interest in, such property; also from rent, royalties, interest, dividends, securities or transactions of any business carried on for gain or profit, or gains or profits, and income derived from any source whatever.

(b) *Of corporations.*—In the case of any corporation, gross income includes only the gross income from sources within the District of Columbia. The proper apportionment and allocation of income with respect to sources of income within and without the District may be determined by processes or formulas of general apportionment under rules and regulations prescribed by the Commissioners.

(c) *Exclusions from gross income.*—The following items shall not be included in gross income and shall be exempt from taxation under this subchapter:

(1) *Life insurance.*—Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or otherwise (but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income).

(2) *Annuities, and so forth.*—Amounts received other than amounts paid by reason of the death of the insured and interest payments on such amounts and other than amounts received as annuities) under a life insurance or endowment contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to 3 per centum of the aggregate premiums or consideration paid for such annuity (whether or not paid during such year), until the aggregate amount excluded from gross income under this subchapter in respect to such annuity equals the aggregate premiums or consideration paid for such annuity. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under paragraph (1) of this paragraph.

(3) *Gifts, bequests, and devises.*—The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income).

(4) *Tax-free interest.*—Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) obligations of a corporation organized under Act of Congress, if such corporation is an instrumentality of the United States; or (C) the obligations of the United States or its possessions.

(5) *Compensation for injuries or sickness.*—Amounts received, through accident or health insurance or under Workmen's Compensation Acts, as compensation for personal injuries or sickness, plus the amount of any damages received, whether by suit or agreement on account of such injuries or sickness.

(6) *Ministers.*—The rental value of a dwelling house and appurtenances thereof furnished to a minister of the gospel as part of his compensation.

(7) *Income exempt under treaty.*—Income of any kind to the extent required by any treaty obligation of the United States.

(8) *Dividends from China trade act corporations.*—In the case of a person, amounts distributed as dividends to or for his benefit by a corporation organized under the China Trade Act, 1922, if, at the time of such distribution, he is a resident of China, and the equitable right to the income of the shares of stock of the corporation is in good faith vested in him.

(9) Income of foreign governments.

(10) Payments of benefits made to or on account of a beneficiary under any of the laws relating to veterans.

(July 26, 1939, 53 Stat. 1088, ch. 367, title II, § 4; Mar. 2, 1940, 54 Stat. 39, ch. 37, § 4; Feb. 2, 1942, 56 Stat. 43, ch. 33, § 1 (b).)

REFERENCES IN TEXT

China Trade Act, 1922, referred to in subsec. (c)(8), is classified to U.S. Code, title 15, ch. 4.

AMENDMENTS

1942—Subsec. (a) amended by act Feb. 2, 1942, which substituted "Definitions" for "Of Individuals" in the catchline.

1940—Subsec. (c)(10) added by act Mar. 2, 1940.

EFFECTIVE DATE OF 1942 AMENDMENT

Amendment of section by act Feb. 2, 1942, applicable to the taxable year 1941, and succeeding taxable years, see section 2 of act Feb. 2, 1942, set out as a note under § 47–1502.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

NOTES TO DECISIONS

Determination of tax

The 1939 income tax of a corporation from District of Columbia "sources" was properly determined by applying to total apportionable net income the ratio of District of Columbia sales to total sales. *Eastman Kodak Co.* v. *District of Columbia* (1943, 131 F. 2d 347, 76 U.S. App. D.C. 339).

Passage of title

In absence of contrary statutory definition, the source of income from sales for District of Columbia income tax purposes is the place at which title to the property passes. *District of Columbia* v. *Upjohn Co.* (1951, 185 F. 2d 992, 88 U.S. App. D.C. 34).

While questions of District of Columbia taxation must be determined according to District law, the question where title to goods passes for tax purposes must be determined by general rules of law where the District law provides that source of income from sales is at place at which the title passes but does not specify the place at which title passes for tax purposes. *Id.*

Sources within District of Columbia

Where parent corporation's entire income consisted of dividends from three subsidiary corporations, all of which (1) were organized under District of Columbia law, (2) had their principal offices and businesses in District, and (3) were engaged in business therein, parent corporation received its income from "sources" within the District and was therefore subject to income and franchise taxes, and it was immaterial that some of business of subsidiaries was done elsewhere, since court was not concerned with sources of their income but only with sources of parent corporation's income. *Consolidated Title Corp.* v. *Dist. of Columbia* (1960, 275 F. 2d 885, 107 U.S. App. D.C. 221).

Corporate income from sales of lumber bought from mill outside the District and delivered to corporation's customers outside the District was not "income from sources within the District of Columbia" within subsection (b) of this section, though the contracts of sale were executed or confirmed at the office of the corporation in the District. *District of Columbia* v. *Johnson & Wimsatt* (1947, 160 F. 2d 913, 82 U.S. App. D.C. 81, certiorari denied 68 S. Ct. 63, 332 U.S. 760, 92 L. Ed. 346).

Taxable income

Where taxpayer's laundry plant was located in Virginia and many of its customers were located in the District of Columbia and to some of its customers it supplied its own articles which it cleaned and laundered and picked up and delivered and such work was performed outside the District, it was not "work done and services performed" in the District within the income tax statute and the charges therefor were not apportionable or allocable to the District in calculating income taxes. *Industrial Coverall Laundry Corp.* v. *District of Columbia* (1951, 188 F. 2d 669, 88 U.S. App. D.C. 266).

Where taxpayer had a laundry plant in Virginia and many of its customers were located in the District of Columbia and to some customers taxpayer furnished a supply of its own articles each week for a consideration with pick up and delivery service and the cleaning thereof was done in the plant in Virginia, source of income for the arrangement was the use or rental of the articles with pick up and delivery incidental thereto and in addition the cleaning and laundry, the latter being service and the income fairly attributable to the use or rental of the articles should be allocated to the District, in calculating income tax. *Id.*

§ 47–1505. Deductions from gross income.

(a) *Items of deduction.*—In computing net income there shall be allowed as deductions:

(1) *Expenses.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

(2) *Interest.*—All interest paid or accrued within the taxable year on indebtedness.

(3) *Taxes.*—Taxes paid or accrued within the taxable year, except—

(A) income taxes;

(B) estate, inheritance, legacy, succession, and gift taxes;

(C) taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not exclude the allowance as a deduction of so much of such taxes as is properly allocable to maintenance or interest charges; and

(D) taxes paid to any State or Territory on property, business, or occupation the income from which is not taxable under this subchapter;

(4) *Losses in trade or business.*—Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in trade or business, the income from which is subject to taxation under this subchapter.

(5) *Losses in transactions for profit.*—Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit, which profit would be subject to taxation under this subchapter, though not connected with the trade or business.

(6) *Intercompany dividends.*—In the case of a corporation, the amount received as dividends from a corporation which is subject to taxation under this subchapter.

(7) *Bad debts.*—Debts ascertained to be worthless and charged off within the taxable year or, in the discretion of the assessor, a reasonable addition to a reserve for bad debts; and when satisfied that a debt is recoverable only in part, the assessor may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.

(8) *Insurance premiums.*—All fire, tornado, and casualty insurance premiums paid during the taxable year in connection with property held for investment or business.

(9) *Depreciation.*—A reasonable allowance for exhaustion, wear, and tear of property used in the trade or business, including a reasonable allowance for obsolescence; and including in the case of natural resources allowances for depletion as permitted by reasonable rules and regulations which the Commissioners are hereby authorized to promulgate.

(10) *Charitable contributions.*—Contributions or gifts actually paid within the taxable year to or for the use of any corporation, or trust, or community fund, or foundation, maintaining activities in the District of Columbia and organized and operated exclusively for religious, charitable, scientific, literary, military, or educational purposes, no part of the net income of which inures to the benefit of any private shareholder or individual: *Provided,* That such deductions shall be allowed only in an amount which in all of the above cases combined does not exceed 15 per centum of the taxpayer's net income as computed without the benefit of this subparagraph.

(11) *Wagering losses.*—Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

(b) *Allocation of deductions.*—In the case of a taxpayer, other than an individual, the deductions allowed in this section shall be allowed only for and to the extent that they are connected with income arising from sources within the District and taxable under this subchapter to a nonresident taxpayer; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the District shall be determined by processes or formulas of general apportionment under rules and regulations to be prescribed by the Commissioners. The so-called charitable contribution deduction allowed by subparagraph (10) of paragraph (a) of this section shall be allowed whether or not connected with income from sources within the District.

(c) *Corporations to file return of total income.*—A corporation shall receive the benefits of the deductions allowed to it under this subchapter only by filing or causing to be filed with the assessor a true and accurate return of its total income received from all sources, whether within or without the District. (July 26, 1939, 53 Stat. 1089, ch. 367, title II, § 5; Feb. 2, 1942, 56 Stat. 43, ch. 33, § 1 (c).)

AMENDMENT

1942—Subsec. (a) (5) amended by act Feb. 2, 1942, which substituted "which profit would be" for "which would be."

EFFECTIVE DATE OF 1942 AMENDMENT

Amendment of section by act Feb. 2, 1942, applicable to the taxable year 1941, and succeeding taxable years, see section 2 of act Feb. 2, 1942, set out as a note under § 47–1502.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

NOTES TO DECISIONS

Basis of depreciation

If property is acquired while income tax law is in effect, cost of its acquisition is logical starting point for computing depreciation allowance, but if property is acquired prior to existence of tax law, there is no logical reason for taking cost as primary figure. *Connecticut Inv. Corp.* v. *Pearson* (D. C. Mun. App. 1945, 42 A. 2d 685).

"Basis" of depreciation for income tax purposes means the starting point or primary figure. *Id.*

Subsection (a) (9) of this section uses "reasonable" as referring to basis for depreciation as well as rate thereof. *Id.*

Where taxpayer acquired property before enactment of this subchapter, basis for computing depreciation thereof for 1941 and 1942 income tax purposes was value as of January 1, 1939, rather than original cost, regardless of basis applicable under federal income tax law. *Id.*

Burden of proof

Burden of establishing deductibility of all profits of a closely held corporation for income tax purposes over a period of years by payment thereof in salaries to stockholders was even greater than burdens which a taxpayer undertakes in an ordinary tax case when he attacks findings of assessor and those of Board of Tax Appeals. *Connecticut Ave. Cafe* v. *District of Columbia* (1948, 169 F. 2d 304, 83 U.S. App. D.C. 272).

Conclusiveness of findings

Finding by Board of Tax Appeals that salaries paid by closely held corporation to its stockholders amounting to virtually all of the total profits during the tax years 1942, 1943, and 1944 were excessive for purpose of determining amount deductible in computing corporation's income taxes for such years was not clearly erroneous. *Connecticut Ave. Cafe* v. *District of Columbia* (1948, 169 F. 2d 304, 83 U.S. App. D.C. 272).

Construction with other laws

Provision in instruction for computation of District of Columbia income tax that it is "permissible" to compute depreciation on same basis as used in federal law, shows that subsection (a) (9) of this section was not construed as requiring that basis be the same as under 26 U. S. C. §§ 113(b), 114 [I.R.C. 1939]. *Connecticut Inv. Corp.* v. *Pearson* (D.C. Mun. App. 1945, 42 A. 2d 685).

Ordinary course of trade or business

The finding of the Board of Tax Appeals that houses, at and before the times of the sales, were held by petitioner primarily for sale to customers in the ordinary course of petitioner's "trade or business" was correct, since they were not capital assets within the meaning of the statute and proceeds therefrom were taxable as income. *Riggs Development Co.* v. *District of Columbia* (1950, 184 F. 2d 698, 87 U.S. App. D.C. 305, certiorari denied 71 S. Ct. 351, 340 U.S. 918, 95 L. Ed. 663).

§ 47–1506. Gains or losses from sale of assets.

(a) No gain or loss from the sale or exchange of a capital asset shall be recognized in the computation of net income under this subchapter. For the purposes of this subchapter, "capital assets" means property held by the taxpayer for more than two years (whether or not connected with his trade or business) but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of a taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(b) Gains or losses from the sale or exchange of property other than a capital asset shall be treated in the same manner as other income or deductible losses, and the basis for computing such gain or loss shall be the cost of such property or, if acquired by some means other than purchase, the fair market value thereof at the date of acquisition. (July 26, 1939, 53 Stat. 1091, ch. 367, title II, § 6.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

NOTES TO DECISIONS

Capital assets

Evidence sustained determination that bonds and stocks acquired by corporation at time of its organization in 1930 were capital assets and that neither gains nor losses resulting from sale in 1942 were allowable in computing income tax. *Henry J. Robb, Inc.* v. *District of Columbia* (1946, 152 F. 2d 283, 80 U.S. App. D.C. 246).

Exchange in reorganization

The Board of Tax Appeals did not consider certain phases of the case obviously for the reason that the District of Columbia statute does not levy a tax on gains from the sale or exchange of capital assets. Hence, the Board was not concerned with the taxability of the exchange in a reorganization. *Seaboard Realty* v. *District of Columbia* (1950, 184 F. 2d 269, 87 U.S. App. D.C. 258).

Questions of fact

Where taxpayer, organized for purpose of lending money on real estate, acquired realty by foreclosure, question whether profits on sales of realty were taxable under this section as income derived from capital assets or as ordinary income was one of fact. *Real Estate Mortgage & Guaranty Corporation* v. *District of Columbia* (1944, 141 F. 2d 361, 78 U.S. App. D.C. 390).

Sale of realty

Where substantially all of corporation's income for many years accrued from purchase and sale of real estate mortgage notes and from interest collected thereon, profits resulting from sale of realty acquired as result of default in payment of indebtedness represented by mortgage notes were taxable as ordinary "income". *Wardman Real Estate Inv. Corp.* v. *District of Columbia* (1946, 152 F. 2d 285, 80 U.S. App. D.C. 248).

Where corporation was in business of lending money on realty, managing and renting property, collecting rents, selling insurance, and such other matters as generally pertain to real estate business, profits from sale of realty acquired through foreclosure of mortgages were taxable as ordinary "income". *Henry J. Robb, Inc.* v. *District of Columbia* (1946, 152 F. 2d 283, 80 U.S. App. D.C. 246).

Sale or exchange

Where a sum of money was paid by the lessors to the lessee who consented to cancel a lease that had some years to run, such transaction was not a sale or exchange of capital assets and gains therefrom were taxable, since a lease that is cancelled is not transferred but terminated and termination or destruction is not a sale or exchange. *United Cigar-Whalen Stores Corp.* v. *District of Columbia* (1949, 176 F. 2d 952, 85 U.S. App. D.C. 301).

Sales of securities

The assessment by the District of Columbia of income tax on gains which taxpayers derived from sales of securities was proper where the securities had been held less than two years. *Garrett* v. *District of Columbia* (1947, 159 F. 2d 457, 81 U.S. App. D.C. 374, certiorari denied 67 S. Ct. 971, 330 U.S. 835, 91 L. Ed. 1282).

Validity of limitation period

In defining capital assets as property held by taxpayer for more than two years and providing that the sale or exchange of property other than the capital assets shall be treated in the same manner as other income or deductible

losses, the purpose of Congress was to distinguish between investment and speculation and this section cannot be held invalid on the ground that the two-year limitation is unreasonable. *Garrett* v. *District of Columbia* (1947, 159 F. 2d 457, 81 U.S. App. D.C. 374, certiorari denied 67 S. Ct. 971, 330 U.S. 835, 91 L. Ed. 1282).

§ 47–1507. Exchanges.

Where property is exchanged for other property, the property received in exchange for the purpose of determining the gain or loss shall be treated as the equivalent of cash to the amount of its fair market value; but when in connection with the reorganization, merger, or consolidation of a corporation a taxpayer receives, in place of stock or securities owned by him, new stock or securities of the reorganized, merged, or consolidated corporation, no gain or loss shall be deemed to occur from the exchange until the new stock or securities are sold or realized upon and the gain or loss is definitely ascertained, until which time the new stock or securities received shall be treated as taking the place of the stock and securities exchanged; provided such reorganization, merger, or consolidation is a "reorganization" within the meaning of the term "reorganization" as defined in section 112 (g) of the Federal Revenue Act of 1936. (July 26, 1939, 53 Stat. 1091, ch. 367, title II, § 7.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1508. Deductions not allowed.

(a) *General rule.*—In computing net income no deductions shall be allowed in any case in respect to—

(1) personal, living, or family expenses;

(2) any amount paid out for new buildings or for permanent improvements or betterments, made to increase the value of any property or estate;

(3) any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; and

(4) premiums paid on any life insurance policy covering the life of any officer or employee or of any person financially interested in any trade or business carried on by the taxpayer when the taxpayer is directly or indirectly a beneficiary under such policy.

(b) *Holders of life or terminable interest.*—Amounts paid under the laws of any State, Territory, District of Columbia, possession of the United States, or foreign country as income to the holder of a life or terminable interest acquired by gift, bequest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time, nor by any deduction allowed by this subchapter (except the deductions provided for in subsections (*l*) and (m) of section 23 of the Federal Revenue Act of 1936, as amended) for the purpose of computing the net income of an estate or trust but not allowed under the laws of such State, Territory, District of Columbia, possession of the United States, or foreign country for the purpose of computing the income to which such holder is entitled. (July 26, 1939, 53 Stat. 1091, ch. 367, title II, § 8.)

CODIFICATION

Section, in the original, read "subsections (*l*) and (m) of section 23 of the Federal Revenue Act of 1926 as amended." The Revenue Act of 1926 contained no section 23. The Federal Revenue Act of 1936 does contain a section 23 which contains subsections (*l*) and (m) and these subsections contain subject matter which is pertinent. Therefore, the words "Act of 1926" have been changed to read "Act of 1936."

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1509. Personal exemptions and credit for dependents.

(a) *Credits.*—There shall be allowed to individuals the following credits against net income:

(1) *Personal exemption.*—In the case of a single person or married person not living with husband or wife, a personal exemption of $1,000; in the case of the head of a family or a married person living with husband or life, a personal exemption of $2,500; a husband and wife living together shall receive but one personal exemption, the amount of such personal exemption shall be $2,500. If such husband and wife make separate returns the personal exemption may be taken by either or divided between them.

(2) *Credit for dependents.*—$400 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective.

(b) *Change of status.*—If the status of the taxpayer, insofar as it affects personal exemption or credit for dependents, changes during the taxable year, the personal exemption and credit shall be apportioned under rules and regulations prescribed by the Commissioners, in accordance with the number of months before and after such change. For the purpose of such apportionment a fractional portion of a month shall be disregarded unless it amounts to more than half a month in which case it shall be considered as a month.

(c) *In return for fractional part of year.*—In the case of a return made for a fractional part of a year, the personal exemption and credit for dependents shall be reduced respectively to amounts which bear the same ratio to the full credits provided as the number of months in the period for which the return is made bears to twelve months. (July 26, 1939, 53 Stat. 1092, ch. 367, title II, § 9.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1510. Accounting periods.

The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion

of the assessor does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 47–1543 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. If the taxpayer makes a Federal income-tax return, his income shall be computed, for the purposes of this subchapter on the basis of the same calendar or fiscal year as in such Federal income-tax return. (July 26, 1939, 53 Stat. 1092, ch. 367, title II, § 10.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1511. Period in which items of gross income included.

The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer unless, under methods of accounting permitted under section 47–1510, any such amounts are to be properly accounted for as of a different period. In the case of the death of a taxpayer there shall be included, in computing net income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includible in respect to such period or a prior period. (July 26, 1939, 53 Stat. 1092, ch. 367, title II, § 11.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1512. Period for which deductions and credits taken.

The deductions and credits provided for in this subchapter shall be taken for the taxable year in which "paid or accrued" or "paid or incurred," dependent upon the method of accounting upon the basis of which the net income is computed unless, in order to clearly reflect the income, the deductions or credits should be taken as of a different period. In the case of the death of a taxpayer there shall be allowed as deductions and credits for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly allowable in respect to such period or a prior period. (July 26, 1939, 53 Stat. 1093, ch. 367, title II, § 12.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1513. Installment basis.

(a) *Dealers in personal property.*—Under regulations prescribed by the Commissioners, a person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit realized or to be realized when payment is completed bears to the total contract price.

(b) *Sales of realty and casual sales of personalty.*—In the case of (1) a casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year) for a price exceeding $1,000, or (2) of a sale or other disposition of real property, if in either case the initial payments do not exceed 30 per centum of the selling price, the income may, under regulations prescribed by the Commissioners, be returned on the basis and in the manner above prescribed in this section. As used in this section the term "initial payments" means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made.

(c) *Change from accrual to installment basis.*—If a taxpayer entitled to the benefits of subsection (a) elects for any taxable year to report his net income on the installment basis, then in computing his income for the year of change or any subsequent year, amounts actually received during any such year on account of sales or other disposition of property made in any prior year shall not be excluded.

(d) *Gain or loss upon disposition of installment obligations.*—If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and (1) in the case of satisfaction at other than face value or a sale or exchange—the amount realized, or (2) in case of a distribution, transmission, or disposition otherwise than by sale or exchange—the fair market value of the obligation at the time of such distribution, transmission, or disposition. Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect to which the installment obligation was received. The basis of the obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full. This paragraph shall not apply to the transmission at death of installment obligations if there is filed with the assessor, at such time as he may by regulation prescribe, a bond in such amount and with such sureties as he may deem necessary, conditioned upon the return as income, by the person receiving any payment in such obligations, of the same proportion of such payment as would be returnable as income by the decedent if he had lived and had received such payment. (July 26, 1939, 53 Stat. 1093, ch. 367, title II, § 13.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1514. Inventories.

Whenever in the opinion of the assessor the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the assessor may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income. (July 26, 1939, 53 Stat. 1094, ch. 367, title II, § 14.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1515. Individual returns—Husband and wife—Persons under disability—Fiduciaries.

(a) *Requirement.*—The following individuals shall each make a return stating specifically the items of his gross income and the deductions and credits allowed under this subchapter and such other information for the purpose of carrying out the provisions of this subchapter as the Commissioners may by regulations prescribe:

(1) Every individual having a net income for the taxable year of $1,000 or over, if single, or if married and not living with husband or wife;

(2) Every individual having a net income for the taxable year of $2,500 or over, if married and living with husband or wife; and

(3) Every individual having a gross income for the taxable year of $5,000 or over, regardless of the amount of his net income.

(b) *Husband and wife.*—If a husband and wife living together have an aggregate net income for the taxable year of $2,500 or over, or an aggregate gross income for such year of $5,000 or over—

(1) Each shall make a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income.

(c) *Persons under disability.*—If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(d) *Fiduciaries.*—For returns to be made by fiduciaries, see section 47–1523. (July 26, 1939, 53 Stat. 1094, ch. 367, title II, § 15; Feb. 2, 1942, 56 Stat. 43, ch. 33, § 1 (d).)

AMENDMENT

1942—Subsec. (a) amended by act Feb. 2, 1942, which deleted words "under oath" preceding "a return stating."

EFFECTIVE DATE OF 1942 AMENDMENT

Amendment of section by act Feb. 2, 1942, applicable to the taxable year 1941, and succeeding taxable years, see section 2 of act Feb. 2, 1942, set out as a note under § 47–1502.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1516. Corporation returns.

Every corporation not expressly exempt from the tax imposed by this subchapter shall make a return which shall state specifically the items of its gross income and the deductions and credits allowed by this subchapter, and such other information for the purpose of carrying out the provisions of this subchapter as the Commissioners may by regulations prescribe. The return shall be sworn to by the president, vice president, or other principal officer, and by the treasurer, assistant treasurer, or chief accounting officer. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporation of whose business or property they have custody and control. (July 26, 1939, 53 Stat. 1095, ch. 367, title II, § 16; Feb. 2, 1942, 56 Stat. 43, ch. 33, § 1(e).)

AMENDMENT

1942—Act Feb. 2, 1942, eliminated the requirement of payment of $25 fee for filing corporation returns.

EFFECTIVE DATE OF 1942 AMENDMENT

Amendment of section by act Feb. 2, 1942, effective Jan. 1, 1942, see section 2 of act Feb. 2, 1942, set out as a note under § 47–1502.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1517. Taxpayer to make return whether return form is sent or not.

Blank forms of returns for income shall be supplied by the assessor. It shall be the duty of the assessor to obtain an income tax return from every taxpayer who is liable under the law to file such return; but this duty shall in no manner diminish the obligation of the taxpayer to file a return without being called upon to do so. (July 26, 1939, 53 Stat. 1095, ch. 367, title II, § 17.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1518. Time for filing returns.

All returns of income for the preceding taxable year shall be made to the assessor on or before the 15th day of April in each year, except that such returns, if made on the basis of a fiscal year shall be made on or before the 15th day of the fourth month following the close of such fiscal year, unless such fiscal year has expired in the calendar year 1939 prior to the approval of this subchapter, in which event returns shall be made on or before the 15th day of the third month following the approval of this subchapter. (July 26, 1939, 53 Stat. 1095, ch. 367, title II, § 18; Mar. 2, 1940, 54 Stat. 38, ch. 37, § 1.)

AMENDMENT

1940—Act Mar. 2, 1940, substituted "April" for "March" and "fourth" for "third."

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1519. Extension of time for filing returns.

The assessor may grant a reasonable extension of time for filing income returns whenever in his judgment good cause exists and shall keep a record of every such extension. Except in case of a taxpayer who is abroad, no such extension shall be granted for more than six months, and in no case for more than one year. (July 26, 1939, 53 Stat. 1095, ch. 367, title II, § 19; Feb. 2, 1942, 56 Stat. 43, ch. 33, § 1 (g).)

AMENDMENT

1942—Act Feb. 2, 1942, deleted the last sentence which read as follows: "In the event time for filing a return is

deferred, the taxpayer is hereby required to pay, as a part of the tax, an amount equal to 6 per centum per annum on the tax ultimately assessed from the time the return was due until it is actually filed in the office of the assessor."

EFFECTIVE DATE OF 1942 AMENDMENT

Amendment of section by act Feb. 2, 1942, applicable to the taxable year 1941, and succeeding taxable years, see section 2 of act Feb. 2, 1942, set out as a note under § 47–1502.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1520. Allocation of income and deductions.

In any of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the District of Columbia, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the assessor is authorized to distribute, apportion, or allocate gross income or deductions between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses. The provisions of this section shall apply, but shall not be limited in application to any case of a common carrier by railroad subject to the Interstate Commerce Act and jointly owned or controlled directly or indirectly by two or more common carriers by railroad subject to said Act. (July 26, 1939, 53 Stat. 1095, ch. 367, title II, § 20.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in the text, is classified to U.S. Code, title 49, chapters 1, 8, 12, 13 and 19.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1521. Publicity of returns—Statistics—Penalties.

(a) *Secrecy of returns.*—Except to any official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee of the District to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return under this subchapter.

(b) *When copies may be furnished.*—Neither the original nor a copy of the return desired for use in litigations in court shall be furnished where the District of Columbia is not interested in the result whether or not the request is contained in an order of the court: *Provided,* That nothing herein shall be construed to prevent the furnishing to a taxpayer of a copy of his return upon the payment of a fee of $1.

(c) *Reciprocal exchange of information with the United States and the several States.*—Notwithstanding the provisions of this section, the assessor may permit the proper officer of the United States or of any State imposing an income tax or his authorized representative to inspect income tax returns, file [1] with the assessor or may furnish to such officer or representative a copy of any such income tax returns provided the United States or such State grant substantially similar privileges to the assessor or his representative, or to the proper officer of the District charged with the administration of this subchapter.

(d) *Publication of statistics.*—Nothing herein shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports and the items thereof, or of the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with any relevant information which in the opinion of the assessor may assist in the collection of such delinquent taxes.

(e) *Penalties for violation of this section.*—Any offense against the provisions of this section shall be a misdemeanor and shall be punishable by a fine not exceeding $1,000 or imprisonment for six months, or both, in the discretion of the court. (July 26, 1939, 53 Stat. 1096, ch. 367, title II, § 21; Aug. 7, 1939, 53 Stat. 1248, ch. 546.)

AMENDMENT

1939—Act Aug. 7, 1939, inserted words "United States or" in two instances.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1522. Returns to be preserved.

Reports and returns received by the assessor under the provisions of this subchapter shall be preserved for six years and thereafter until the assessor orders them to be destroyed. (July 26, 1939, 53 Stat. 1096, ch. 367, title II, § 22).

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1523. Fiduciary returns.

(a) *Requirement of return.*—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this subchapter and such other information for the purpose of carrying out the provisions of this subchapter as the Commissioners may by regulations prescribe:

(1) Every individual having a net income for the taxable year of $1,000 or over, if single, or if married and not living with husband or wife;

(2) Every individual having a net income for the taxable year of $2,500 or over, if married and living with husband or wife;

(3) Every individual having a gross income for the taxable year of $5,000 or over, regardless of the amount of his net income;

(4) Every estate the net income of which for the taxable year is $1,000 or over;

(5) Every trust the net income of which for the taxable year is $100 or over;

(6) Every estate or trust the gross income of which for the taxable year is $5,000 or over, regardless of the amount of the net income.

[1] So in original. Probably should be "filed."

(b) *Joint fiduciaries.*—Under such regulations as the Commissioners may prescribe, a return by one of two or more joint fiduciaries and filed in the office of the assessor shall be sufficient compliance with the above requirement. Such fiduciary shall make oath (1) that he has sufficient knowledge of the affairs of the individual, estate, or trust for which the return is made, to enable him to make the return, and (2) that the return is, to the best of his knowledge and belief, true and correct.

(c) *Law applicable to fiduciaries.*—Any fiduciary required to make a return under this subchapter shall be subject to all the provisions of law which apply to individuals. (July 26, 1939, 53 Stat. 1096, ch. 367, title II, § 23; Feb. 2, 1942, 56 Stat. 44, ch. 33, § 1(h).)

AMENDMENT

1942—Subsec. (a) amended by act Feb. 2, 1942, which, among other changes, required returns for trusts having net income of $100 or more for the taxable year.

EFFECTIVE DATE OF 1942 AMENDMENT

Amendment of section by act Feb. 2, 1942, applicable to the taxable year 1941, and succeeding taxable years, see section 2 of act Feb. 2, 1942, set out as a note under § 47–1502.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1524. Estates and trusts—Application—Computation—Net income—Different taxable year—Revocable trusts—Income to grantor—Definitions—Intangibles.

(a) *Application of tax.*—The taxes imposed by this subchapter upon individuals shall apply to the income of estates, or of any kind of property held in trust, including—

(1) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) *Computation of tax.*—The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in paragraph (e) of this section (relating to revocable trusts) and paragraph (f) of this section (relating to income for benefit of the grantor).

(c) *Net income.*—The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(1) there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (2) of this section in the same or any succeeding taxable year;

(2) in the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary;

(3) there shall be allowed as a deduction (in lieu of the deductions for charitable contributions authorized by section 47–1505(a)(10) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating a trust, is during the taxable year paid or permanently set aside for the purposes and in the manner provided in section 47–1505(a)(10) or is to be used exclusively for the purposes enumerated in section 47–1505(a)(10).

(d) *Different taxable year.*—If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under subparagraph (1) of paragraph (c) of this section, to include in computing his net income, shall be based upon the income of the estate or trust for any taxable year of the estate or trust ending within or with his taxable year.

(e) *Revocable trusts.*—Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

(1) in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom; or

(2) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom,

then the income of such part of the trust shall be included in computing the net income of the grantor.

(f) *Income for benefit of grantor.*—Where any part of the income of a trust—

(1) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(2) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

(3) is, or in the discretion of the grantor or of any person not having a substantial adverse in-

terest in the disposition of such part of the income may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in section 47–1505 (a) (10); relating to the so-called "charitable contribution" deduction); then such part of the income of the trust shall be included in computing the net income of the grantor.

(g) *Definition of "in discretion of grantor."*—As used in this section, the term "in the discretion of the grantor" means "in the discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question."

(h) *Income from intangible personal property held by trust.*—Income from intangible personal property held by any trust company or by any national bank situated in the District (with or without an individual trustee, resident or nonresident) in trust to pay the income for the time being to, or to accumulate or apply such income for the benefit of any nonresident of the District, shall not be taxable hereunder if—

(1) such beneficial owner or cestui que trust was at the time of the creation of the trust a nonresident of the District; and

(2) the testator, settlor, or grantor was also at the time of the creation of the trust a nonresident of the District.

(i) *Credits against net income.*—There shall be allowed to an estate the same personal exemption as is allowed to a single person under section 47–1509 (a), and a trust shall be allowed a credit of $100 against net income. (July 26, 1939, 53 Stat. 1097, ch. 367, title II, § 24; Feb. 2, 1942, 56 Stat. 44, ch. 33, § 1 (i).)

AMENDMENT

1942—Subsec. (i) added by act Feb. 2, 1942.

EFFECTIVE DATE OF 1942 AMENDMENT

Amendment of section by act Feb. 2, 1942 applicable to the taxable year 1941, and succeeding taxable years, see section 2 of act Feb. 2, 1942, set out as a note under § 47–1502.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1525. Partnerships.

(a) *Partners only taxable.*—Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity, and no income tax shall be assessable hereunder upon the net income of any partnership. All such income shall be assessable to the individual partners; it shall be reported by such partners as individuals upon their respective individual income returns; and it shall be taxed to them as individuals along with their other income at the rate and in the manner herein provided for the taxation of income received by individuals. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year; or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership ending within the taxable year upon the basis of which the partner's net income is computed.

(b) *Partnership return.*—Every partnership shall make a return for each taxable year stating specifically the items of its gross income and the deductions allowed by this subchapter, and shall include in the return the names and the addresses of the individuals who would be entitled to share in the net income if distributed, and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners. (July 26, 1939, 53 Stat. 1099, ch. 367, title II, § 25.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1526. Time of payment of tax—Extension—Advance payments—Fractional part of cent—Collector.

(a) *Time of payment.*—One-half of the total amount of the tax imposed by this subchapter shall be paid on the 15th day of April following the close of the calendar year and the remaining one-half of the tax shall be paid on the 15th day of October following the close of the calendar year, or, if the return be made on the basis of a fiscal year, then one-half of the total amount of the tax imposed by this subchapter shall be paid on the 15th day of the fourth month following the close of the fiscal year and the remaining one-half of said tax shall be paid on the 15th day of the tenth month following the close of the fiscal year, except a fiscal year which expired in the calendar year 1939 prior to the approval of this subchapter, in which event the tax shall be paid on the 15th day of the third month following the approval of this subchapter.

(b) *Extension of time for payments.*—At the request of the taxpayer the assessor may extend the time for payment by the taxpayer of the amount determined as the tax for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof: *Provided, however,* That where the time for filing a return is extended for a period exceeding six months under the provisions of section 47–1519, the assessor may extend the time for payment of the tax, or the first installment thereof, to the same date to which he has extended the time for filing the return. In such case the amount in respect to which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) *Voluntary advance payment.*—A tax imposed by this chapter, or any installment thereof, may be paid, at the election of the taxpayer, prior to the date prescribed for its payment.

(d) *Fractional part of cent.*—In the payment of any tax under this subchapter a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(e) *Payment to collector and receipts.*—The tax provided under this subchapter shall be collected by the collector and the revenues derived therefrom

shall be turned over to the treasury of the United States for the credit to the District in the same manner as other revenues are turned over to the United States treasury for the credit to the District. The collector shall, upon written request, give to the person making payment of any income tax a full written or printed receipt therefor. (July 26, 1939, 53 Stat. 1099, ch. 367, title II, § 26; Mar. 2, 1940, 54 Stat. 39, ch. 37, § 2; Feb. 2, 1942, 56 Stat. 44, ch. 33, § 1 (j).)

AMENDMENTS

1942—Subsec. (b) amended by act Feb. 2, 1942, which inserted the proviso.

1940—Subsec. (a) amended generally by act Mar. 2, 1940. Prior to such amendment, subsection read as follows: "The total amount of tax imposed by this title shall be paid on the 15th day of March following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the 15th day of the third month following the close of the fiscal year, except a fiscal year which expired in the calendar year 1939 prior to the approval of this Act, in which event the tax shall be paid on the 15th day of the third month following the approval of this Act."

EFFECTIVE DATE OF 1942 AMENDMENT

Amendment of section by act Feb. 2, 1942, applicable to the taxable year 1941, and succeeding taxable years, see section 2 of act Feb. 2, 1942, set out as a note under § 47–1502.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1527. Tax a personal debt.

Every tax imposed by this subchapter, and all increases, interest, and penalties thereof, shall become, from the time it is due and payable, a personal debt, from the person or persons liable to pay the same to the District, and shall be entitled to the same priority as other District taxes, and the taxes levied hereunder and the interest and penalties thereon shall be collected by the collector of taxes in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection. (July 26, 1939, 53 Stat. 1100, ch. 367, title II, § 27.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1528. Information from the Bureau of Internal Revenue.

The Bureau of Internal Revenue of the Treasury Department of the United States is authorized and required to supply such information as may be requested by the Commissioners relative to any person subject to the taxes imposed by this subchapter. (July 26, 1939, 53 Stat. 1100, ch. 367, title II, § 28.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

INTERNAL REVENUE SERVICE

The official title of the Bureau of Internal Revenue was changed to the Internal Revenue Service by Treas. Dept. Order 150–29, eff. July 9, 1953.

§ 47–1529. Assessor to administer.

(a) *Duties of assessor.*—The assessor is hereby required to administer the provisions of this subchapter. The assessor shall prescribe forms identical with those utilized by the Federal Government, except to the extent required by differences between this subchapter and its application and Federal Act and its application. He shall apply as far as practicable the administrative and judicial interpretations of the Federal income tax law so that computations of income for purposes of this subchapter shall be, as nearly as practicable, identical with the calculations required for Federal income tax purposes. As soon as practicable after the return is filed the assessor shall examine it and shall determine the correct amount of the tax.

(b) *Statements and special returns.*—Every taxpayer liable to any tax imposed by this subchapter shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations as the Commissioners from time to time may prescribe. Whenever the assessor judges it necessary he may require any taxpayer, by notice served upon him, to make a return, render under oath such statements, or keep such records as he deems sufficient to show whether or not such taxpayer is liable to tax under this subchapter and the extent of such liability.

(c) *Examination of books and witnesses.*—The assessor, for the purpose of ascertaining the correctness of any return filed hereunder, or for the purpose of making an estimate of the taxable income of any taxpayer, is authorized to examine any books, papers, records, or memoranda of any person bearing upon the matters required to be included in the return and may summon any person to appear and produce books, records, papers, or memoranda bearing upon the matters required to be included in the return, and to give testimony or answer interrogatories under oath respecting the same, and the assessor shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then, and in that event, the assessor may report that fact to the District Court of the United States for the District of Columbia, or one of the justices thereof, and said court or any justice thereof hereby is empowered to compel obedience to such summons to the same extent as witnesses may be compelled to obey the subpenas of that court. Any person in custody or control of any books, papers, records, or memoranda bearing upon the matters required to be included in such returns, who shall refuse to permit the examination by the assessor or any person designated by him of any such books, papers, records, or memoranda, or who shall obstruct or hinder the assessor or any person designated by him in the examination of any books, papers, records, or memoranda, shall upon conviction thereof be fined not more than $300. All prosecutions under this section shall be brought in the Municipal Court for the District of Columbia on information by the corporation counsel of the District of Columbia in the name of the District of Columbia.

(d) *Return by assessor.*—If any person fails to make and file a return at the time prescribed by

law or by regulations made under authority of law, or makes, wilfully or otherwise, a false or fraudulent return, the assessor shall make the return from his own knowledge and from such information as he can obtain through testimony or otherwise. Any return so made and subscribed by the assessor shall be prima facie good and sufficient for all legal purposes. (July 26, 1939, 53 Stat. 1100, ch. 367, title II, § 29; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1.)

CHANGE OF NAME

Act June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b), as amended May 24, 1949, 63 Stat. 107, ch. 139, § 127, redesignated the District Court of the United States for the District of Columbia as the United States District Court for the District of Columbia.

Act July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1, changed the name of the municipal court for the District of Columbia to the "District of Columbia Court of General Sessions". Provisions identical with those of such act July 8, 1963, § 1, were contained in act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1. Prior thereto, "Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

NOTES TO DECISIONS

Construction

The provision of this section that the assessor shall apply as far as practicable the administrative and judicial interpretations of the federal income tax law so that computations of income for purposes of this subchapter should be as nearly as practicable identical with the calculations required for federal income tax purposes would apply only to those parts of the federal law which were like parts of this subchapter. *Eastman Kodak Co.* v. *District of Columbia* (1943, 131 F. 2d 347, 76 U. S. App. D. C. 339).

Exhausting administrative remedy

Under statute imposing a District franchise tax upon the net income of every corporation derived from sources within the District and regulations authorizing the assessor to relieve a taxpayer if the apportionment formula results in an inequitable tax, where taxpayer failed to show that it had exhausted the administrative remedy, taxpayer was not entitled to ask the court to hold that District assessments were invalid and erroneous because of improper apportionment formula. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U.S. App. D.C. 292).

Interpretations under federal law

The local statute requires that the District assessor apply as far as possible the administrative and judicial interpretations of the federal income tax law, so that computations of income shall be, as nearly as possible, identical with the calculations required for federal income tax purposes. The District Board of Tax Appeals should first ascertain what the federal disposition of the basic question in this case was and then determine what effect should be given that determination in the specific matter of local taxes. *Seaboard Realty* v. *District of Columbia* (1950, 184 F. 2d 269, 87 U.S. App. D. C., 258).

The provision in this section that the assessor shall apply as far as practicable the administrative and judicial interpretations of the federal income tax law so that computations of income for purposes of this subchapter should be as nearly as practicable identical with the calculations required for federal income tax purposes did not apply to computation of income tax of corporation where no identical calculations would result and where Congress had omitted from this subchapter provisions which it had placed in the federal income tax law. *Eastman Kodak Co.* v. *District of Columbia* (1943, 131 F. 2d 347, 76 U. S. App. D. C. 339).

Regulations

Regulation of the District commissioners relying on sales as the determinative factor in apportioning franchise tax on corporation of part of net income of the taxpayer's business which was carried on partly within and partly without the District was not invalid as inherently arbitrary and unreasonable, or if not inherently unreasonable as invalid as applied to the taxpayer on the ground that it unreasonably apportioned to the District income which properly had no relation to the privilege of doing business in the District, where there was no showing that the formula used resulted in attributing to the taxpayer's privilege of doing business in the District a greater value than it actually had. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U.S. App. D.C. 292).

§ 47–1530. Definition of "deficiency."

Definition of "deficiency."—As used in this subchapter in respect of a tax imposed by this subchapter "deficiency" means—

(1) the amount by which the tax imposed by this subchapter exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or

(2) if no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax.

(July 26, 1939, 53 Stat. 1101, ch. 367, title II, § 30.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1531. Determination and assessment of deficiency—Protest—Appeal.

If a deficiency in tax is determined by the assessor, the taxpayer shall be notified thereof and given a period of not less than thirty days, after such notice is sent by registered mail, in which to file a protest and show cause or reason why the deficiency should not be paid. Opportunity for hearing shall be granted by the assessor, and a final decision thereon shall be made as quickly as practicable. Any deficiency in tax then determined to be due shall be assessed and paid, together with any addition to the tax applicable thereto, within ten days after notice and demand by the collector. The taxpayer may appeal from such assessment to the Board of Tax Appeals for the District of Columbia in the same manner and to the same extent as set forth in sections 47–2403, 47–2404, 47–2407 to 47–2412. (July 26, 1939, 53 Stat. 1101, ch. 367, title II, § 31.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court and the member thereof to be known as the judge of the District of Columbia Tax Court, see § 47–2402.

§ 47–1532. Jeopardy assessment—Bond to stay collection.

(a) *Authority for making.*—If the assessor believes that the collection of any tax imposed by this subchapter will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties, the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the collector for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful.

(b) *Bond to stay collection.*—The collection of the whole or any part of the amount of such assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of the amount, the collection of which is stayed, at the time at which, but for this section such amount would be due. (July 26, 1939, 53 Stat. 1102, ch. 367, title II, § 32.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1533. Period of limitation upon assessment and collection—Waiver—Collection after assessment.

(a) *General rule.*—Except as provided in paragraph (b) of this section—

(1) The amount of income taxes imposed by this subchapter shall be assessed within two years after the return is filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

(2) In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within twelve months after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of two years after the return is filed. This subparagraph shall not apply in the case of a corporation unless—

(A) such written request notifies the assessor that the corporation contemplates dissolution at or before the expiration of such twelve-month period; and

(B) the dissolution is in good faith begun before the expiration of such twelve-month period; and

(C) the dissolution is completed.

(3) If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within five years after the return was filed.

(4) For the purposes of subparagraphs (1), (2), and (3), a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(b) *False return.*—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) *Waiver.*—Where before the expiration of the time prescribed in paragraph (a) for the assessment of the tax, both the assessor and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(d) *Collection after assessment.*—Where the assessment of any income tax imposed by this subchapter has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (A) within three years after the assessment of the tax or (B) prior to the expiration of any period for collection agreed upon in writing by the assessor and the taxpayer before the expiration of such three-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. (July 26, 1939, 53 Stat. 1102, ch. 367, title II, § 33.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1534. Refunds.

Except as otherwise provided in section 47–1531, where there has been an overpayment of any tax imposed by this subchapter, the amount of such overpayment shall be refunded to the taxpayer. No such refund shall be allowed after two years from the time the tax is paid unless before the expiration of such period a claim therefor is filed by the taxpayer. The amount of the refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim, or, if no claim was filed, then during the two years immediately preceding the allowance of the refund. Every claim for refund must be in writing, under oath; must state the specific grounds upon which the claim is founded, and must be filed with the assessor. If the assessor disallows any part of a claim for refund, he shall send to the taxpayer by registered mail a notice of the part of the claim so disallowed. Within ninety days after the mailing of such notice, the taxpayer may file an appeal with the Board of Tax Appeals for the District of Columbia, in the same manner and to the same extent as set forth in sections 47–2403, 47–2404, 47–2407 to 47–2412.

The remedy provided to the taxpayer under this section shall not be deemed to take away from the taxpayer any remedy which he might have under any other provision of law; but no suit by the taxpayer for the recovery of any part of such tax shall be instituted in any court if the taxpayer has elected to file an appeal in accordance with this section. (July 26, 1939, 53 Stat. 1103, ch. 367, title II, § 34.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court and the member thereof to be known as the judge of the District of Columbia Tax Court, see § 47–2402.

§ 47–1535. Closing agreements.

The assessor is authorized to enter into an agreement with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any income tax for any period ending prior to the date of the agreement. If such agreement is approved by the Commissioners within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—the case shall not be reopened as to the matters agreed upon or the agreement modified; and in any suit or proceeding relating to the tax liability of the taxpayer such agreement shall not be annulled, modified, set aside, or disregarded. (July 26, 1939, 53 Stat. 1103, ch. 367, title II, § 35.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1536. Compromises—Concealment of assets—Penalties.

(a) *Authority to make.*—Whenever in the opinion of the commissioners there shall arise with respect of any tax imposed under this subchapter any doubt as to the liability of the taxpayer or the collectibility of the tax for any reason whatsoever the commissioners may compromise such tax.

(b) *Concealment of assets.*—Any person who, in connection with any compromise under this section or offer of such compromise or in connection with any closing agreement under this subchapter or offer to enter into any such agreement, willfully (1) conceals from any officer or employee of the District of Columbia any property belonging to the estate of the taxpayer or other person liable with respect of the tax, or (2) receives, destroys, mutilates, or falsifies any book, document, or record or makes under oath any false statement relating to the estate or the financial condition of the taxpayer or to the person liable in respect of the tax, shall, upon conviction thereof, be fined not more than $5,000 or imprisoned for not more than one year, or both.

(c) *Of penalties.*—The commissioners shall have the power for cause shown to compromise any penalty arising under this subchapter. (July 26, 1939, 53 Stat. 1103, ch. 367, title II, § 36.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1537. Failure to file return.

In case of any failure to make and file a return required by this subchapter, within the time prescribed by law or prescribed by the commissioners in pursuance of law, 25 per centum of the tax shall be added to the tax, except that when a return is filed after such time and it is shown that the failure to file it was due to reasonable cause and not due to willful neglect, no such addition shall be made to the tax. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax. (July 26, 1939, 53 Stat. 1104, ch. 367, title II, § 37.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1538. Interest on deficiencies.

(a) *Assessment and payment.*—Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of one-half of 1 per centum per month from the date prescribed for the payment of the tax (or, if the tax is paid in instalments, from the date prescribed for the payment of the first instalment) to the date the deficiency is assessed.

(b) *If extension granted for payment of deficiency.*—If the time for payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended at the rate of one-half of 1 per centum per month for the period of the extension. If a part of the deficiency the time for payment of which is so extended is not paid in full, together with all penalties and interest due thereon, prior to the expiration of the period of the extension, then interest at the rate of one-half of 1 per centum per month shall be added and collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid. (July 26, 1939, 53 Stat. 1104, ch. 367, title II, § 38; Feb. 2, 1942, 56 Stat. 44, ch. 33, § 1 (k); July 10, 1952, 66 Stat. 543, ch. 649, § 2 (d).)

AMENDMENTS

1952—Act July 10, 1952, decreased the interest rates from one per centum to one-half of one per centum.

1942—Subsec. (b) added by act Feb. 2, 1942.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act July 10, 1952, effective July 1, 1952, see section 8 of act July 10, 1952, set out as a note under § 47–1619.

EFFECTIVE DATE OF 1942 AMENDMENT

Amendment of section by act Feb. 2, 1942, applicable to the taxable year 1941, and succeeding taxable years, see section 2 of act Feb. 2, 1942, set out as a note under § 47–1502.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1539. Additions to the tax in case of deficiency—Penalty for fraud.

(a) *Negligence.*—If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency.

(b) *Fraud.*—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid. (July 26, 1939, 53 Stat. 1104, ch. 367, title II, § 39.)

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1540. Additions to the tax in case of nonpayment.

(a) *Tax shown on return.*—

(1) *General rule.*—Where the amount determined by the taxpayer as the tax imposed by this subchapter, or any instalment thereof, or any part of such amount or instalment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of one-half of 1 per centum a month from the date prescribed for its payment until it is paid.

(2) *If extension granted.*—Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any instalment thereof, has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 47–1541 is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in subparagraph (1) of this paragraph, interest at the rate of one-half of 1 per centum a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) *Deficiency.*—Where a deficiency, or any interest or additional amounts assessed in connection therewith under section 47–1538, or under section 47–1539, or any addition to the tax in case of delinquency provided for in section 47–1537 is not paid in full within ten days from the date of notice and demand from the collector, there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of one-half of 1 per centum a month from the date of such notice and demand until it is paid.

(c) *Fiduciaries.*—For any period an estate is held by a fiduciary appointed by order of any court of competent jurisdiction or by will, there shall be collected interest at the rate of one-half of 1 per centum per month in lieu of the interest provided in subparagraphs (a) and (b) of this section. (July 26, 1939, 53 Stat. 1104, ch. 367, title II, § 40; July 10, 1952, 66 Stat. 543, ch. 649, § 2 (d).)

AMENDMENT

1952—Act July 10, 1952, decreased the interest rates from one per centum to one-half of one per centum.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act July 10, 1952, effective July 10, 1952, see section 8 of act July 10, 1952, set out as a note under § 47–1619.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1541. Time extended for payment of tax shown on return.

If the time for payment of the amount determined as the tax by the taxpayer, or any instalment thereof, is extended under the authority of section 47–1526 (b), there shall be collected, as a part of such amount, interest thereon at the rate of one-half of 1 per centum per month from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension. (July 26, 1939, 53 Stat. 1105, ch. 367, title II, § 41; Feb. 2, 1942, 56 Stat. 44, ch. 33, § 1 (*l*); July 10, 1952, 66 Stat. 543, ch. 649, § 2 (d).)

AMENDMENTS

1952—Act July 10, 1952, decreased the interest rate from one per centum to one-half of one per centum.

1942—Act Feb. 2, 1942, substituted "section 47–1526(b)" for "section 47–1526(c)".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act July 10, 1952, effective July 1, 1952, see section 8 of act July 10, 1952, set out as a note under § 47–1619.

EFFECTIVE DATE OF 1942 AMENDMENT

Amendment of section by act Feb. 2, 1942, applicable to the taxable year 1941, and succeeding taxable years, see section 2 of act Feb. 2, 1942, set out as a note under § 47–1502.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1542. Penalties—"Person" defined.

(a) *Negligence.*—Any person required under this subchapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply information, who fails to pay such tax, to make such return, to keep such records, or supply such information, at the time or times required by law or regulations, or who makes a false or fraudulent return, shall, upon conviction thereof (in addition to other penalties provided by law), be fined not more than $300 for each and every such failure or violation, and each and every day that such failure continues shall constitute a separate and distinct offense. All prosecutions under this subsection shall be brought in the District of Columbia Court of General Sessions on information by the corporation counsel or one of his assistants in the name of the District.

(b) *Wilful violation.*—Any person required under this subchapter to pay or collect any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of this subchapter, who wilfully refuses to pay or collect such tax, to make such returns, to keep such records, or to supply such information, or who wilfully attempts in any

manner to defeat or evade the tax imposed by this subchapter shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall be fined not more than $10,000 or imprisoned for not more than one year, or both, together with costs of prosecution.

(c) *Definition of "person."*—The term "person" as used in this section includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under duty to perform the act in respect to which the violation occurs. (July 26, 1939, 53 Stat. 1105, ch. 367, title II, § 42; Feb. 2, 1942, 56 Stat. 44, ch. 33, § 1 (m); Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

AMENDMENT

1942—Subsec. (a) amended by act Feb. 2, 1942, included the making of a false or fraudulent return, and substituted "to pay any tax" for "to pay or collect any tax."

EFFECTIVE DATE OF 1942 AMENDMENT

Amendment of section by act Feb. 2, 1942, applicable to the taxable year 1941, and succeeding taxable years, see section 2 of act Feb. 2, 1942, set out as a note under § 47–1502.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

NOTES TO DECISIONS

Attempts

The crime of willfully attempting to defeat and evade income taxes due to the District of Columbia was complete when attempt was complete. *United States* v. *Rick* (D.C. Mun. App. 1946, 48 A. 2d 614).

Information, charging that defendants knowingly and unlawfully attempted to defeat and evade a large part of income taxes due and owing by them to the District of Columbia by false and fraudulent income tax returns and by concealing and attempting to conceal from the taxing authorities the true gross income and net taxable income received by defendants, charged an offense under subsection (b) of this section providing that anyone who willfully refuses to pay income taxes shall be guilty of a misdemeanor and be fined not more than $10,000, and not under subsection (a) of this section providing that one who negligently fails to pay income tax shall be fined not more than $300. *Id.*

False or fradulent returns

"Fraudulent" in subsection (a) of this section includes an intent and involves a subject-matter of which some one is to be deprived and there is no real difference between a "fraudulent return" and a "willful attempt to evade a tax." *Rick* v. *United States* (1947, 161 F. 2d 897, 82 U.S. App. D.C. 101).

A "false return" in subsection (a) of this section may be merely incorrect due to negligence or some other cause lacking intent, or not involving a tax, and is not necessarily willful or an intent to evade a tax. *Id.*

Penalty

Subsection (b) of this section imposing a penalty of not more than $10,000 or imprisonment for not more than one year, or both for willfully attempting to defeat or evade income tax, clearly states both the offense and the maximum penalty, and the maximum is all that any one need know concerning the penalty for violation of a law. *Rick* v. *United States* (1947, 161 F. 2d 897, 82 U.S. App. D.C. 101).

Prosecution

One who willfully attempts to evade District of Columbia income tax by filing false and fraudulent return is subject to prosecution by the United States Attorney and not by the Corporation Counsel. *Rick* v. *United States* (1947, 161 F. 2d 897, 82 U.S. App. D.C. 101).

§ 47–1543. Definitions.

For the purpose of this subchapter and unless otherwise required by the context—

(1) The word "person" means an individual, a trust or estate, a partnership, or a corporation.

(2) The word "taxpayer" means any person subject to a tax imposed by this subchapter.

(3) The word "partnership" includes a syndicate, group, pool, joint adventure, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this subchapter, a trust or estate or a corporation; and the word "partner" includes a member in such a syndicate, group, pool, joint adventure, or organization.

(4) The word "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The word "domestic" when applied to a corporation other than an association, means created under the law of United States applicable to the District of Columbia; and when applied to an association or partnership means having the principal office or place of business within the District of Columbia.

(6) The word "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(7) The word "fiduciary" means a guardian, trutstee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(8) The word "individual" means all natural persons, whether married or unmarried; and also all trusts, estates, and fiduciaries acting for other persons; it does not include corporations or partnerships acting for or in their own behalf.

(9) The words "taxable year" means the calendar year or the fiscal year ending during such calendar year upon the basis of which the net income is computed under this subchapter. The term "taxable year" includes, in the case of a return made for a fractional part of a year under the provisions of this subchapter, the period for which such return is made.

(10) The words "fiscal year" mean an accounting period of twelve months and ending on the last day of any month other than December.

(11) The words "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this subchapter.

(12) The words "trade or business" include the engaging in or carrying on of any trade, business, profession, vocation or calling, or commercial activity in the District of Columbia; and include the performance of the functions of a public office.

(13) The word "stock" includes a share in an association, joint-stock company, or insurance company.

(14) The word "shareholder" includes a member in an association, joint-stock company, or insurance company.

(15) The words "United States" when used in a geographical sense include only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(16) The word "dividend" means any distribution made by a corporation out of its earnings or profits to its stockholders or members whether such distribution be made in cash, or any other property, other than stock of the same class in the corporation. It includes such portion of the assets of a corporation distributed at the time of of dissolution as are in effect a distribution of earnings.

(17) The word "include," when used in a definition contained in this subchapter, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(18) The word "Commissioners" means the Commissioners of the District of Columbia or their duly authorized representative or representatives.

(19) The word "District" means the District of Columbia.

(20) The word "assessor" means the assessor of the District of Columbia or his duly authorized representative or representatives.

(21) The word "collector" means the collector of taxes of the District of Columbia.

(July 26, 1939, 53 Stat. 1106, ch. 367, title II, § 43; Feb. 2, 1942, 56 Stat. 45, ch. 33, § 1 (n).)

AMENDMENT

1942—Act Feb. 2, 1942, included authorized representatives within par. (20).

EFFECTIVE DATE OF 1942 AMENDMENT

Amendment of section by act Feb. 2, 1942, applicable to the taxable year 1941, and succeeding taxable years, see section 2 of act Feb. 2, 1942, set out as a note under § 47–1502.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1544. Information returns.

Every person subject to the jurisdiction of the District in whatever capacity, acting, including receivers or mortgagors of real or personal property, fiduciaries, partnerships, and employers making payment of dividends, interest, rent, premiums, annuities, compensations, remunerations, emoluments, or other income to foreign corporations, shall render such returns thereof to the assessor as may be prescribed by rules and regulations of the Commissioners. (July 26, 1939, ch. 367, title II, § 44, as added Feb. 2, 1942, 56 Stat. 45, ch. 33, § 1 (o).)

EFFECTIVE DATE

Section applicable to the taxable year 1941, and succeeding taxable years, see section 2 of act Feb. 2, 1942, set out as a note under § 47–1502.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1545. Withholding of tax at source.

Whenever the Commissioners shall deem it necessary, in order to satisfy the District's claim for income tax payable by any foreign corporation, they may, by rules and regulations, require any person subject to the jurisdiction of the District to withhold and pay to the collector of taxes an amount not in excess of 5 per centum of all income payable by such person to a foreign corporation. After such foreign corporation shall have filed all returns required under this subchapter, and the same shall have been audited, the collector of taxes shall refund any overpayment to the taxpayer. (July 26, 1939, ch. 367, title II, § 45, as added Feb. 2, 1942, 56 Stat. 45, ch. 33, § 1 (p).)

EFFECTIVE DATE

Section applicable to the taxable year 1941, and succeeding taxable years, see section 2 of act Feb. 2, 1942, set out as a note under § 47–1502.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

§ 47–1546. Licenses — Corporations liable—Duration—Posting — Revocation — Renewal — Penalties — "Business" defined.

(a) Every corporation (except those expressly exempt from the tax imposed by this subchapter) engaging in or carrying on any business, or receiving income from District of Columbia sources, shall obtain a license so to do on or before the 1st day of January of each year: *Provided,* That such license for the calendar year 1942 may be obtained within sixty days after February 2, 1942. Applications for licenses shall be upon forms prescribed and furnished by the Commissioners, and each application shall be accompanied by a fee of $10.

(b) All licenses issued under this section shall be in effect for the duration of the calendar year in which issued, unless revoked as herein provided, and shall expire at midnight of the 31st day of December of each year. No license may be transferred to any other corporation.

(c) All licenses granted under this section to corporations having an office or place of business in the District must be conspicuously posted in the office or on the premises of the licensee, and said license shall be accessible at all times for inspection by the police or other officers duly authorized to make such inspection.

(d) Every corporation not having an office or place of business in the District but which receives income from District sources or engages in or carries on any business in the District by or through an employee or agent shall procure the license provided by this subchapter. Every employee or agent of any such corporation shall carry either the license or a certificate from the assessor that the license has been obtained, which license or certificate shall be exhibited to the police or other officers duly authorized to inspect the same. Such certificate shall be in such form as the assessor shall determine, and shall be furnished, without charge, by the assessor, upon

request. No employee or agent of a corporation not having an office or place of business within the District shall engage in or carry on any business in the District for or on behalf of such corporation unless such corporation shall have first obtained a license, as provided by this section.

(e) The Commissioners may, after hearing, revoke any license issued hereunder for failure of the licensee to file a return or corrected return within the time required by this subchapter, or to pay any installment of tax when due thereunder.

(f) Licenses shall be renewed for the ensuing calendar year upon application as provided in subsection (a) of this section. No license shall be renewed if the taxpayer has failed or refused to pay any tax or installment thereof, or penalties thereon, imposed by this subchapter: *Provided, however,* That the Commissioners, in their discretion, for cause shown, may, on such terms or conditions as they may determine or prescribe, waive the provisions of this subsection.

(g) Any corporation receiving income from District sources or engaging in or carrying on any business in the District without first having obtained a license so to do, and any person engaging in or carrying on any business for or receiving income from District sources on behalf of a corporation not having a license so to do, shall, upon conviction thereof, be fined not more than $300 for each and every failure, refusal, or violation, and each and every day that such failure, refusal, or violation continues shall constitute a separate and distinct offense. All prosecutions under this subsection shall be brought in the Municipal Court for the District of Columbia on information by the corporation counsel or any of his assistants in the name of the District: *Provided, however,* That the provisions of this section shall not apply to mere collection by an agent of income of a corporation not having the license required hereby.

(h) The term "business", as used in this section, shall include the carrying on or exercising for gain or economic benefit, either direct or indirect, any trade, business, or commercial activity in the District: *Provided, however,* That such term shall not include the procurement of orders for the sale of personal property by means of telephonic communication, written correspondence, or solicitation by salesmen in the District where such orders require acceptance without the District before becoming binding on the purchaser and seller and title to such property passes from the seller to the purchaser without the District; nor the mere submission of bids or the mere acceptance of contracts for the sale of personal property to the United States. (July 26, 1939, ch. 367, title II, § 46, as added Feb. 2, 1942, 56 Stat. 45, ch. 33, § 1 (q), and amended Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 22, 1942, 56 Stat. 376, ch. 433, §§ 2, 3.)

AMENDMENT

1942—Subsec. (g) amended by act June 22, 1942, § 2, which added the proviso.

Subsec. (h) amended by act June 22, 1942, § 3, which added the proviso.

EFFECTIVE DATE OF 1942 AMENDMENT

Section 4(b) of act June 22, 1942, provided that: "The amendments made by sections 2 and 3 of this Act [to this section] shall be effective as of January 1, 1942."

EFFECTIVE DATE

Section applicable to the taxable year 1941, and succeeding taxable years, except that the provisions of this section requiring licenses for corporations shall be effective January 1, 1942, see section 2 of act Feb. 2, 1942, set out as a note under § 47–1502.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

CHANGE OF NAME

Act July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1, changed the name of the municipal court for the District of Columbia to the "District of Columbia Court of General Sessions". Provisions identical with those of such Act July 8, 1963, § 1, were contained in Act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1. Prior thereto, "Municipal Court for the District of Columbia" was substituted for "police court of the District" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

§ 47–1547. Compensation for services rendered for a period of five years or more.

In the case of compensation (a) received for personal services rendered by an individual in his individual capacity, or as a member of a partnership, and covering a period of five calendar years or more from the beginning to the completion of such services, (b) paid (or not less than 95 per centum of which is paid) only on completion of such services, and (c) required to be included in gross income of such individual for any taxable year beginning after December 31, 1939, the tax attributable to such compensation shall not be greater than the aggregate of the taxes attributable to such compensation had it been received in equal portions in each of the years included in such period. (July 26, 1939, ch. 367, title II, § 47, as added Feb. 2, 1942, 56 Stat. 46, ch. 33, § 1 (r).)

EFFECTIVE DATE

Section applicable to the taxable year 1941, and succeeding taxable years, see section 2 of act Feb. 2, 1942, set out as a note under § 47–1502.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

SUBCHAPTER II.—INCOME AND FRANCHISE TAXES FOR TAXABLE YEARS AFTER JANUARY 1, 1947

TITLE I.—REPEAL OF PRIOR INCOME TAX LAW AND APPLICABILITY OF SUBCHAPTER; GENERAL DEFINITIONS

§ 47–1551. Repeal of sections 47–1501 to 47–1547 and retention of certain provisions thereof.

Sections 47–1501 to 47–1547 are hereby repealed with respect to taxable years or portions thereof beginning on and after the 1st day of January 1947 for all purposes, except the following purposes in connection with taxes due or accrued under said sections:

(a) For the imposition of assessments and penalties, civil and criminal, for the violation of or failure to comply with any provisions of such sections and the regulations prescribed thereunder;

(b) For requiring the making, filing, and submission of returns and reports required by such sections;

(c) For the examination of all books, records, and other documents, and witnesses;

(d) For the assessment and collection of the taxes imposed by such sections and the filing of liens therefor; and

(e) For the allowance of refunds of overpayments of any taxes assessed under the provisions of such sections. (July 16, 1947, 61 Stat. 331, ch. 258, Art. I, title I, § 1.)

SHORT TITLE

The opening paragraph of act July 16, 1947, provided that: "This Act [adding this subchapter and sections 43–1511a, 43–1520a and 47–1901b, amending sections 40–201, 40–203 and 40–204, repealing subchapter I of this chapter and section 47–1901a, and enacting provisions set out as notes under sections 40–201 and 47–501], divided into articles, may be cited as the 'District of Columbia Revenue Act of 1947', and that article I of this Act [this subchapter] may be cited as the 'District of Columbia Income and Franchise Tax Act of 1947.'"

SEPARABILITY OF PROVISIONS

Article VII of act July 16, 1947, provided that: "If any provision of this Act [adding this subchapter and sections 43–1511a, 43–1520a and 47–1901b, amending sections 40–201, 40–203 and 40–204, repealing subchapter I of this chapter and section 47–1901a, and enacting provisions set out as notes under sections 40–201 and 47–501] or the application thereof to any person or circumstances is held invalid, the remainder of the Act, and the application of such provision to the other persons or circumstances, shall not be affected thereby."

§ 47–1551a. Applicability of subchapter.

The provisions of this subchapter shall apply to the taxable year or part thereof beginning on the 1st day of January 1947 and to succeeding taxable years. (July 16, 1947, 61 Stat. 331, ch. 258, Art. I, title I, § 2.)

§ 47–1551b. Returns under sections 47–1501 to 47–1547 and returns for first taxable year to which this subchapter is applicable.

If the taxable year of any person ends on the last day of any month other than December prior to the 1st day of January 1947, such person shall file his return for such taxable year under the provisions of sections 47–1501 to 47–1547, and pay the taxes imposed by said sections on his income for such taxable year at the times specified therefor in said sections. Such taxpayer shall also file his return of income, received or accrued, according to his method of accounting, during the period between the last day of such taxable year and the 1st day of January 1947 under the provisions of sections 47–1501 to 47–1547, and pay the taxes imposed by said sections on his income for such period at the times specified therefor in said sections. Such portion of such person's income as is received or accrued, according to his method of accounting, during taxable years or parts thereof to which this subchapter is applicable shall be reported and taxed under the provisions of this subchapter: *Provided, however,* That any person whose taxable year ends subsequent to the 1st day of January 1947 may irrevocably elect to file his return of his income for such entire taxable year and pay the taxes imposed thereon under the provisions of this subchapter. (July 16, 1947, 61 Stat. 331, ch. 258, Art. I, title I, § 3.)

§ 47–1551c. General definitions.

For the purposes of this subchapter and wherever appearing herein, unless otherwise required by the context—

(a) The word "District" means the District of Columbia.

(b) The word "Commissioners" means the Commissioners of the District of Columbia or their duly authorized representative or representatives.

(c) The word "Assessor" means the Assessor of the District of Columbia or his duly authorized representative or representatives.

(d) The word "Collector" means the Collector of Taxes of the District of Columbia or his duly authorized representative or representatives.

(e) The word "person" means an individual (other than a fiduciary), a fiduciary, a partnership (other than an unincorporated business), an association, an unincorporated business, and a corporation.

(f) The word "individual" means all natural persons (other than fiduciaries), whether married or unmarried.

(g) The word "fiduciary" means a guardian, trustee, executor, committee, administrator, receiver, conservator, or any other person acting in any fiduciary capacity for any person.

(h) The words "trade or business" include the engaging in or carrying on of any trade, business, profession, vocation or calling or commercial activity in the District of Columbia; and include the performance of the functions of a public office: *Provided, however,* That the words "trade or business" shall not include, for the purposes of this subchapter—

(1) Sales of tangible personal property whereby title to such property passes within or without the District, by a corporation or unincorporated business which does not physically have or maintain an office, warehouse, or other place of business in the District, and which has no officer, agent, or representative having an office or other place of business in the District, during the taxable year; or

(2) Sales of tangible personal property by a corporation or unincorporated business which—

(A) has or maintains an office, warehouse, or other place of business in the District, or

(B) has an officer, agent, or representative having an office or other place of business in the District,

during the taxable year for the sole purpose of dealing with the United States for commercial or noncommercial purposes or of dealing with the District or persons for noncommercial purposes; but each such corporation and unincorporated business which does business in the District with the United States shall be subject to the licensing provisions in title XIV of this subchapter.

For purposes of this proviso, the words "agent" or "representative" shall not include any independent broker engaged independently in regularly soliciting orders in the District for sellers and who holds himself out as such.

(i) The word "taxpayer" means any person required by this subchapter to pay a tax, file a return or report, or apply for a license.

(j) The words "fiscal year" mean an accounting period of twelve months ending on the last day of any month other than December.

(k) The words "taxable year" mean the calendar year or the fiscal year, upon the basis of which the net income of the taxpayer is computed under this subchapter; if no fiscal year has been established by the taxpayer, they mean the calendar year. The phrase "taxable year" includes, in the case of a return made for a fractional part of a calendar or fiscal year under the provisions of this subchapter or under regulations prescribed by the Commissioners, the period for which such return is made: *Provided, however,* That no taxpayer may change from a calendar year to a fiscal year or from a fiscal year to a calendar year within any taxable year without the written permission of the Assessor.

(*l*) The words "capital assets" mean any property, whether real or personal, tangible or intangible, held by the taxpayer for more than two years (whether or not connected with his trade or business), but do not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the end of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(m) The word "dividend" means any distribution made by a corporation (domestic or foreign) to its stockholders or members, out of its earnings, profits, or surplus (other than paid-in surplus), whenever earned by the corporation and whether made in cash or any other property (other than stock of the same class in the corporation if the recipient of such stock dividend has neither received nor exercised an option to receive such dividend in cash or in property other than stock instead of stock) and whether distributed prior to, during, upon, or after liquidation or dissolution of the corporation: *Provided, however,* That in the case of any dividend which is distributed other than in cash or stock in the same class in the corporation and not exempted from tax under this subchapter, the basis of tax to the recipient thereof shall be the market value of such property at the time of such distribution: *And provided, however,* That the word "dividend" shall not include any dividend paid by a mutual life insurance company to its shareholders.

(n) The word "stock" includes a share in any association, joint-stock company, or insurance company.

(*o*) The word "shareholder" includes a member in an association, joint-stock company, or insurance company.

(p) The words "include", "includes", or "including", when used in a definition contained in this subchapter, shall not be deemed to exclude other things otherwise within the meaning of the word or words defined.

(q) The word "deficiency" as used in this subchapter with respect to any tax imposed by this subchapter means—

(1) the amount or amounts by which the tax imposed by this subchapter as determined by the Assessor exceeds the amount shown as the tax by the taxpayer upon his return; or

(2) the amount assessed as a tax by the Assessor if no return is filed by the taxpayer.

(r) The word "corporation" includes any trust, association, joint-stock company, or partnership which is classed or should be classed as a corporation for purposes of Federal income taxation.

(s) The word "resident" means every individual domiciled within the District on the last day of the taxable year, and every other individual who maintains a place of abode within the District for more than seven months of the taxable year, whether domiciled in the District or not. The word "resident" shall not include any elective officer of the Government of the United States or any employee on the staff of an elected officer in the legislative branch of the Government of the United States if such employee is a bona fide resident of the State of residence of such elected officer, or any officer of the executive branch of such Government whose appointment to the office held by him was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States, unless such officers are domiciled within the District on the last day of the taxable year.

(t) The word "nonresident" means every individual other than a resident.

(u) The term "dependent" means any of the following persons over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer, and whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $500.

(1) A son or daughter of the taxpayer, or a descendant of either.

(2) A stepson or stepdaughter of the taxpayer.

(3) A brother, sister, stepbrother, or stepsister of the taxpayer.

(4) The father or mother of the taxpayer, or an ancestor of either.

(5) A stepfather or stepmother of the taxpayer.

(6) A son or daughter of a brother or sister of the taxpayer.

(7) A brother or sister of the father or mother of the taxpayer.

(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer.

(9) Repealed. Mar. 31, 1956, 70 Stat. 68, ch. 154, § 2(b).

The terms "brother" and "sister" include a brother or sister of the half-blood. For the purposes of determining whether any of the foregoing relationships exist, a legally adopted child of a person shall be considered a child of such person by blood. The term "dependent" does not include any individual who is a citizen or subject of a foreign country unless such individual is a resident of the United States or of a country contiguous to the United States.

(v) The term "head of a family" means an individual who maintains in one household one or more dependents as defined in paragraph (u) of this section. The personal exemption for dependents shall be allowed to the head of a family for dependents in excess of one dependent.

(w) The term "wages" means wages as defined in section 3401 (a) of the Internal Revenue Code of 1954.

(x) The term "payroll period" means payroll period as defined in section 3401 (b) of the Internal Revenue Code of 1954.

(y) The term "employer" means employer as defined in section 3401 (d) of the Internal Revenue Code of 1954.

(z) The term "employee" shall apply only to individuals having a place of abode or residing or domiciled within the District at a time a tax is required to be withheld by an employer, and to every other individual who maintained a place of abode within the District for more than seven months of the taxable year, whether domiciled in the District or not. The term "employee" shall include an officer of a corporation, but shall not include any elective officer of the Government of the United States or any officer or employee in the legislative branch of the Government of the United States whose compensation is paid by the Secretary of the Senate or the Clerk of the House of Representatives, or any officer of the executive branch of such Government whose appointment to the office held by him was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States, unless such officer of the executive branch is domiciled within the District on the last day of the taxable year.

(aa) Notwithstanding subsection (m) of this section, any distribution in liquidation of a regulated public utility (as defined in section 7701(a)(33)(A)(iii) of the Internal Revenue Code of 1954) which, for purposes of the Internal Revenue Code of 1954, is treated as in part or full payment in exchange for the stock in such utility, shall, if for purposes of this article the stock is a capital asset, be treated as in part or full payment in exchange for the stock. (July 16, 1947, 61 Stat. 332, Art I, title I, § 4; May 3, 1948, 62 Stat. 206, ch. 246, § 1; May 27, 1949, 63 Stat. 129, ch. 146, title IV, §§ 401, 402; March 31, 1956, 70 Stat. 68, ch. 154, § 2; Sept. 19, 1966, 80 Stat. 809, Pub. L. 89–585, § 1; Sept. 30, 1966, 80 Stat. 858, Pub. L. 89–610, title VII, § 703.)

REFERENCES IN TEXT

The Internal Revenue Code of 1954, referred to in subsec. (aa), is classified to 26 U.S.C., and § 7701(a)(33)(A)(iii) thereof, referred to therein, is classified to 26 U.S.C. § 7701(a)(33)(A)(iii).

AMENDMENTS

1966—Subsection (aa) added by act Sept. 30, 1966.

Subsection (h)(2) amended by act Sept. 19, 1966, to clarify, in the case of a corporation or unincorporated business making sales of personal property and maintaining a place of business or officer, agent or representative in the District, the activities which such corporation or unincorporated business may carry on in the District without such activities constituting a "trade or business" as those words are defined in subsec. (h). Prior to such amendment, said subsec. (h) read as follows:

"(2) Sales of tangible personal property by a corporation or unincorporated business which does not maintain an office or other place of business in the District and which has no office, agent, or representative in the District except for the sole purpose of doing business with the United States, but such corporations and unincorporated businesses shall be subject to the licensing provisions in title XIV of this subchapter."

1956—Subsec. (u) amended by act Mar. 31, 1956, § 2(a), (b), which inserted words ", and whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $500" following "was received from the taxpayer", and repealed par. (9) which included the spouse of the taxpayer, if living with the taxpayer on the last day of the taxable year, within the definition of "dependent."

Subsecs. (v)—(z) added by act Mar. 31, 1956, § 2(c).

1949—Subsec. (s) amended by act May 27, 1949, § 401, which excluded elected and appointive officers and employees on the staff of elected officers in the legislative branch from the definition of "resident" unless they are domiciled within the District on the last day of the taxable year, and eliminated provisions which required the filing of a declaration of domicile.

Subsec. (u) amended by act May 27, 1949, § 402, which added par. (9).

1948—Subsec. (h) amended by act May 3, 1948, which added the proviso.

EFFECTIVE DATE OF AMENDMENT BY ACT SEPT. 19, 1966

Section 2 of act Sept. 19, 1966, 80 Stat. 809, Pub. L. 89–585, provided: "The amendment [to subsec. (h)(2) of this section] made by the first section of this Act shall apply with respect to taxable years ending on or after the date of the enactment of this Act [Sept. 19, 1966.]".

EFFECTIVE DATE OF 1956 AMENDMENT

Section 19 of act Mar. 31, 1956, provided that: "Unless otherwise provided, the provisions of this title [amending this section and sections 47–1557b, 47–1564a, 47–1567a, 47–1567b, 47–1567d, 47–1586f, 47–1586g, 47–1586j, 47–1589, 47–1589a, 47–1589c, 47–1589d, 47–1591, 47–1591a, 47–1591b and 47–1591f] shall be applicable to taxable years beginning after December 31, 1955."

EFFECTIVE DATE OF 1949 AMENDMENT

Section 421 of act May 27, 1949, provided that: "The provisions of sections 401, 402, 408, 411, 412, 413, and 414 of this title [amending this section and sections 47–1557b(a)(13), 47–1564a, 47–1567a and 47–1567b, and repealing section 47–1567c] shall be applicable to taxable years beginning after the 31st day of December 1949, and the provisions of all other sections [adding sections 47–1557a(b)(14), (c), and 47–1577d(d), (e), and amending sections 47–1557b(a)(1), (4), (8), (9), (15), 47–1561c, 47–1574c, 47–1577d, 47–1586i, 47–1586j and 47–1591] shall be applicable to taxable years or portions thereof beginning after the 31st day of December 1948."

EFFECTIVE DATE OF 1948 AMENDMENT

Section 5 of act May 3, 1948, provided that: "The amendments made by this Act [adding section 47–1557a(b)(13), amending this section and section 47-1580, and repealing section 47–1591c] shall apply to the taxable year or part thereof beginning on the 1st day of January 1948, and to succeeding taxable years."

SHORT TITLE

Section 1 of act Mar. 31, 1956, provided that: "This Act [adding section 47–1595a, amending this section and sections 25-124, 25–138, 47–1557b, 47–1564a, 47–1567a, 47–1567b, 47–1567d, 47–1586f, 47–1586g, 47–1586j, 47–1589, 47–1589a, 47–1589c, 47–1589d, 47–1591, 47–1591a, 47–1591b, 47–1591f, 47–2501b, 47–2601, 47–2605 and 47–2701, and enacting provisions set out as notes under this section and sections 25–124 and 47–2601] may be cited as the 'District of Columbia Revenue Act of 1956.'"

SEPARABILITY OF PROVISIONS

Section 602 of act Mar. 31, 1956, provided that: "If any provision of this Act [see Short Title note under this section] or the application thereof to any person or circumstances is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby."

RETROACTIVE EFFECT OF SUBSECTION (AA)

Section 703 of act Sept. 30, 1966, in amending this section by adding subsec. (aa), provided that such amend-

ment should be effective with respect to taxable years ending after December 31, 1961.

CONSTRUCTION; SEVERABILITY OF PROVISIONS; RULES AND REGULATIONS

For construction of act Sept. 30, 1966, Pub. L. 89–610, amending this section, severability of provisions with respect thereto, and authority to make rules and regulations to carry out provisions thereof, see §§ 1003–1005 of such act, set out as a note under § 25–124.

OFFICERS OR AGENCIES OF DISTRICT

Section 603 of act Mar. 31, 1956, provided that: "Wherever any officer or agency of the District, other than the Commissioners of the District of Columbia, is mentioned in this Act [see Short Title note under this section], such officer or agency shall be deemed to be the officer or agency so mentioned, or the officer, officers, agency or agencies succeeding to the functions of the officer or agency so mentioned, pursuant to Reorganization Plan No. 5 of 1952 [set out in the Appendix to Title 1, Administration]."

NOTES TO DECISIONS

Burden of proof

Income and franchise taxpayer bears burden of establishing his claim for refund so that ordinarily inadequacies in record will result in judgment in favor of District of Columbia. *District of Columbia* v. *ACF Industries, Inc.* (1965, 350 F. 2d 795, 122 U.S. App. D.C. 12).

Business or commercial activity

Petitioner who purchased second-trust notes at discount, investigated credit of makers and inspected security to ascertain that value justified loan, made his own collections, maintained records of payments and followed up delinquent debtors by telephone or letter, was not engaged in investment of funds in securities but was engaged in "business or commercial activity" within statute imposing tax upon income of unincorporated businesses for privilege of carrying on or engaging in any trade or business. *Stone* v. *District of Columbia* (1952, 198 F. 2d 601, 91 U. S. App. D. C. 140).

Capital assets

For District of Columbia income and franchise tax purposes, good will can qualify as a capital asset if held for the required length of time. *District of Columbia* v. *ACF Industries, Inc.* (1965, 350 F. 2d 795, 122 U.S. App. D.C 12).

In determining in sale of business whether good will existed for required capital asset holding period to qualify for capital gain treatment for District of Columbia income and franchise tax purposes, it should be assumed, in absence of some significant event which would fix acquisition of good will at some time after commencement of business, that it came into being at time business established itself as a going concern. *Id.*

Under rule that in determining whether gain from sale of business is entitled to capital gains treatment in computing District of Columbia income and franchise tax the sale of entire business is treated as sale of an aggregate of individual assets, total purchase price must be apportioned among the assets of the business, each asset being assigned an amount related to reasonable market value at time of sale. *Id.*

In absence of countervailing policies, federal rule under which sale of entire business is treated as a sale of an aggregate of individual assets to be separately matched against definition of capital assets was applied to determine whether gain from sale of business was entitled to capital gains treatment in computing District of Columbia income and franchise tax. *Id.*

Congressional intent in relation to capital gains

Congress intended to give different treatment to taxpayers in District of Columbia than to those who might be liable to capital gains taxes under federal scheme. *District of Columbia* v. *H. Goldman and Y. D. Goldman* (1963, 328 F. 2d 520, 117 U.S. App. D.C. 219).

Dividends

Where corporation liquidates entirely, distribution from its earnings constitutes dividend for District of Columbia income tax purposes. *B. W. Doyle* v. *District of Columbia* (1966, 363 F. 2d 694, 124 U.S. App. D.C. 207).

Purported sale of corporate stock by taxpayer, who was majority stockholder of corporation, who had controlled operation of corporation, and who, in negotiating sale, dominated course of dealings prescribed by him, at rates apparently fixed by him, to end that he receive his share of corporation's capital and its previously undistributed earnings, constituted dividend, for income tax purposes, and not sale of capital assets so as to exclude gain from gross income. *Id.*

Where taxpayer paid $1,000,000 in cash for all stock of corporation which had $1,000,000 in miscellaneous assets and immediately liquidated the corporation and transferred all assets to himself under District of Columbia income tax statute defining dividends as any corporate distribution out of earnings, profits or surplus the $300,000 he received from accumulated earned surplus of corporation was taxable as a dividend, but as to the remaining $700,000 of assets taxpayer sustained a $300,000 non-capital loss which was fully deductible. *C. A. Snow, et ano.* v. *District of Columbia* (1965, 361 F. 2d 523, 124 U.S. App. D.C. 69).

District of Columbia income tax statute declaring that a distribution made by corporation out of corporate earnings is a dividend carries as a corollary its negative complement that such a distribution is not a payment in exchange for or in extinguishment of stock upon which it is declared, and it means that the stock remains in being. *Id.*

If a distribution made in liquidation of corporation were not of earnings and does not exceed cost to stockholder, thus representing to him merely return of his investment, it is not income. *Id.*

Distributions by a corporation from its earnings or from an increased value of its assets are gains to stockholder separated from the body of his investment by the act of distribution, while a distribution by corporation which is a return to stockholder of that which he had put into venture is not a gain but a return of what the stockholder already had and is not income. *Id.*

Where corporation sold all of its tangible assets, in return for which it received cash or its equivalent, and proceeds of the sale were reflected on corporation's books as earned surplus, when such funds were distributed in the course of corporation's liquidation the estate which managed the corporation received a taxable dividend. *Estate of Migical John Uline* v. *District of Columbia* (1966, 360 F. 2d 820, 124 U.S. App. D.C. 5).

Principle that unrealized appreciation in value of assets of corporation will not become a dividend when corporation, on dissolution, distributes those assets to its stockholders has no application to situation where corporation receives full value upon sale of its assets. *Id.*

Evidence that negotiation for sale of corporate assets was carried on by corporate officer, that corporation was not only nominal grantor but also legal owner until after transfer of property, and that proceeds from sale were distributed as corporation by its letter directed, supported Tax Court's determination that corporation realized gain on sale and proceeds were taxable to shareholders as dividends. *N. Bord and A. R. Bord* v. *District of Columbia* (1965, 344 F. 2d 560, 120 U.S. App. D.C. 175).

Under District of Columbia tax statute which in defining "dividends" reached distribution out of corporation's earnings, profits or surplus whenever earned by corporation, undistributed earnings in 1957 and 1958, utilized on corporate books to reduce accumulated deficit, retained character as earnings and became source of possible dividends in later year. *District of Columbia* v. *H. Goldman and Y. D. Goldman* (1963, 328 F. 2d 520, 117 U.S. App. D.C. 219).

Under statute defining "dividend" as any distribution made by corporation to stockholders out of earnings, profits or surplus whenever earned by corporation, unrealized appreciation in value of improved realty which was held by corporation for income and not for sale did not become a "dividend" when corporation distributed assets to stockholders upon dissolution. *District of Columbia* v. *B. W. Oppenheimer* (1962, 301 F. 2d 563, 112 U.S. App. D.C. 329).

Amounts distributed in complete liquidation of a corporation were properly includable in the stockholders' gross income as a dividend under this section providing

that dividends include any distribution made by a corporation out of its earnings, profits or surplus whenever earned by the corporation and whether made in cash and whether distributed prior to, during, upon, or after liquidation or dissolution of the corporation. *Berliner and Frank* v. *District of Columbia* (1958, 258 F. 2d 651, 103 U.S. App. D.C. 351, certiorari denied 78 S. Ct. 1384, 357 U.S. 937, 2 L. Ed. 2d 1551).

The Fifth Amendment to the Constitution does not prohibit income taxation of dividends on amounts distributed in corporate liquidation to the extent that they represent corporate earnings on theory that such a tax taxes a stockholder on earnings of another entity, or on theory that it arbitrarily and capriciously provides a different treatment from that afforded stockholders who sell their stock to third persons. *Id.*

Engaging in business

Automobile manufacturer which under dealer selling agreements exercised large degree of control over daily business operations of dealers in District of Columbia and which through financial aid given exercised supervisory control over substantial part of business of dealers, was engaged in trade or business in District within District's code imposing franchise tax. *District of Columbia* v. *General Motors Corp.* (1964, 336 F. 885, 118 U.S. App. D.C. 381; reversed on other grounds 85 S. Ct. 1156).

Where oil company had offices and a warehouse in nearby Virginia, and company's salesmen sold motor fuel to dealers in District of Columbia, and company trucked the product to local stations in the District, and company stored tires, batteries, and other accessories at its plant in Maryland, neither the company nor its salesmen had office, warehouse or place of business in District and consequently under the statute the company was not subject to local corporate franchise tax on privilege of carrying on business and receiving income from sources within the District, notwithstanding that dealer with place of business in District was a wholesaler of such merchandise and that company used a telephone answering service in the District. *District of Columbia* v. *Cities Service Oil Company* (1958, 258 F. 2d 426, 103 U.S. App. D.C. 332).

Oil company would not be subjected to District of Columbia corporate franchise tax on theory that company by asserting, in application for motor fuel importer's license, its name and a district address in the blank space calling for name and address of its "resident general agent", was estopped to deny that it had a representative in the District. *Id.*

Where corporate officer in charge of District of Columbia office maintained by Ohio corporation reported to home office on pending legislation and Treasury Department regulations and received inquiries about sales of corporation's products in district, and salesmen from other offices of corporation solicited sales in district, and corporation shipped substantial quantities of goods to customers in district, corporation was engaged in commercial activity and was in business in district and had an office and officer in district and hence was subject to District of Columbia business privilege tax. *Owens-Illinois Glass Co.* v. *District of Columbia* (1953, 204 F. 2d 29, 92 U. S. App. D. C. 15).

Penalty where question has not been previously resolved

Where question raised by taxpayers' failure to report their proceeds on sale of corporate asset was substantial one under District of Columbia Code and no prior decision had completely resolved it, taxpayers should not have been penalized for originally taking position different from that ultimately adopted by Tax Court. *N. Bord and A. R. Bord* v. *District of Columbia* (1965, 344 F. 2d 560, 120 U.S. App. D.C. 175).

TITLE II.—EXEMPT ORGANIZATIONS

§ 47–1554. Exempt organizations.

The following organizations shall be exempt from taxation under this subchapter:

(a) Labor organizations.

(b) Fraternal beneficiary societies, orders, or associations, (1) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and (2) providing for the payment of life, sick, or accident benefits to the members of such society, order, or association, or their dependents.

(c) Cemetery companies owned and operated exclusively for the benefit of their members and which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private individual or shareholder.

(d) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, to a substantial extent within the District, no part of the net earnings of which inures to the benefit of any private individual or shareholder, and no part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.

(e) Business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private individual or shareholder.

(f) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted principally to charitable, educational, or recreational purposes within the District.

(g) Banks, trust companies, building and loan associations, insurance companies, companies which guarantee the fidelity of any individual or individuals, such as bonding companies, and companies which furnish abstracts of title or which insure titles to real estate, all of which pay taxes on their gross earnings, premiums, or gross receipts under existing laws of the District.

(h) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this subchapter.

(i) Corporations organized under Acts of Congress, if such corporations are instrumentalities of the United States and if, under such Acts, as amended and supplemented, such corporations are exempt from Federal income taxes.

(j) Voluntary employees' beneficiary associations providing for the payment of life, sick, or accident benefits to the members of such association or their dependents, if (1) no part of their net earnings inures (other than through such payments) to the benefit of any private individual or shareholder, and (2) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses.

(k) Voluntary employees' beneficiary associations providing for the payment of life, sick, or accident benefits to the members of such association or their dependents or their designated beneficiaries, if (1)

admission to membership in such association is limited to individuals who are officers or employees of the United States Government or the Government of the District of Columbia, and (2) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private individual or shareholder. (July 16, 1947, 61 Stat. 334, ch. 258, Art. I, title II.)

NOTES TO DECISIONS

In general

A non-profit corporation which operated cafeterias in federal government buildings and recreation facilities in federal parks was not exempt from franchise, motor vehicle, and personal property taxes by the District of Columbia, even though none of the earnings of the corporation inured to the benefit of any individual. *Government Services Incorporated* v. *District of Columbia* (1951, 189 F. 2d 662, 88 U. S. App. D. C. 360, certiorari denied 72 S. Ct. 51, 342 U. S. 828, 96 L. Ed. 626).

TITLE III.—NET INCOME, GROSS INCOME AND EXCLUSIONS THEREFROM, AND DEDUCTIONS

§ 47–1557. Net income.

For the purposes of this subchapter and wherever appearing herein, unless otherwise required by the context, the words "net income" mean the gross income of a taxpayer less the deductions allowed by this subchapter. (July 16, 1947, 61 Stat. 335, ch. 258, Art. I, title III, § 1.)

§ 47–1557a. Gross income and exclusions therefrom.

(a) The words "gross income" include gains, profits, and income derived from salaries, wages, or compensation for personal services of whatever kind and in whatever form paid, including salaries, wages, and compensation paid by the United States to its officers and employees to the extent the same is not exempt under this subchapter, or income derived from any trade or business or sales or dealings in property, whether real or personal, other than capital assets as defined in this subchapter, growing out of the ownership, or sale of, or interest in, such property; also from rent, royalties, interest, dividends, securities, or transactions of any trade or business carried on for gain or profit, or gains or profits, and income derived from any source whatever.

(b) The words "gross income" shall not include the following:

(1) *Proceeds of life-insurance policies.*—The proceeds of life-insurance policies paid by reason of the death of the insured, whether in a single sum or otherwise (but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income).

(2) *Annuities, and so forth.*—(A) Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts and other than amounts received as annuities) under a life-insurance or endowment contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year), then the excess shall be included in gross income. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to 3 per centum of the aggregate premiums or consideration paid for such annuity (whether or not paid during such year), until the aggregate amount excluded from gross income under this title in respect to such annuity equals the aggregate premiums or consideration paid for such annuity. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life-insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under subsection (1) or this subsection. This subsection and subsection (1) shall not apply with respect to so much of a payment under a life-insurance, endowment, or annuity contract, or any interest therein, as, under section 47–1557b (a) (10), is includible in the gross income of the recipient.

(B) *Employees' annuities.*—If an annuity contract is purchased by an employer for an employee under a plan with respect to which the employer's contribution is deductible under subsection 47–1557b (a) (11), the employee shall include in his income the amounts received under such contract for the year received except that if the employee paid any of the consideration for the annuity, the annuity shall be included in his income as provided in subsection (b) (2) (A) of this section, the consideration for such annuity being considered the amount contributed by the employee. In all other cases, if the employee's rights under the contract are nonforfeitable except for failure to pay future premiums, the amount contributed by the employer for such annuity contract on and after such rights become nonforfeitable shall be included in the income of the employee in the year in which the amount is contributed, which amount together with any amounts contributed by the employee shall constitute the consideration paid for the annuity contract in determining the amount of the annuity required to be included in the income of the employee under subsection (b) (2) (A) of this section.

(3) *Gifts, bequests, and devises.*—The value of property acquired by gift, devise, or inheritance (but the income from such property shall be included in gross income).

(4) *Tax-free interest.*—Interest upon (a) the obligations of a State, Territory of the United States, or any political subdivision thereof, or the District of Columbia; and (b) obligations of the United States, its agencies, or instrumentalities.

(5) *Compensation for injuries or sickness.*—Amounts received, through accident or health insurance or under workmen's compensation or employer's liability acts, or by way of damages for personal injuries, whether by suit or agreement.

(6) *In the case of ministers.*—The rental value of a dwelling house and appurtenances thereof

furnished to a minister of the gospel as part of his compensation.

(7) *Income exempt under treaty.*—Income of any kind to the extent required by any treaty obligation of the United States.

(8) *Income of foreign governments.*

(9) *Payments to veterans and others.*—(A) Payments, under any of the laws relating to veterans, of benefits made to or on account of a beneficiary, to the extent such payments are not subject to taxation under the Internal Revenue Code of 1954.

(B) Amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service to the extent such amounts are excluded from gross income under section 104 (a) (4) of the Internal Revenue Code of 1954.

(10) *Income from unincorporated business.*—In the case of any person entitled to a share in the net income of any unincorporated business subject to tax under the provisions of sections 47–1574 to 47–1574e, an amount equal to the proportionate share of such person in such part of such net income as is in excess of the exemption provided in section 47–1577c: *Provided, however,* That such part so excluded from the gross income of such person shall be reported by and taxed against the unincorporated business under the provisions of sections 47–1574 to 47–1574e.

(11) *Capital gains.*—Gains from the sale or exchange of any capital assets as defined in this subchapter.

(12) *Personal services.*—If at least 80 per centum of the total compensation for personal services covering a period of thirty-six calendar months or more (from the beginning to the completion of such services) is received or accrued in one taxable year by an individual or a partnership, the tax attributable to any part thereof which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period which precedes the date of such receipt or accrual.

(13) Income derived from the sale of tangible personal property to the United States by corporations and unincorporated businesses having their principal places of business located outside the District, which property is delivered from places outside the District for use outside the District: *Provided, however,* That the taxpayer shall furnish to the Assessor a statement in writing of the amount of gross sales so made and, if required by the Assessor, a list of the names of the agencies of the United States through which such property was sold.

(14) Dues and initiation fees in the case of any club organized and operated exclusively for pleasure and recreation, no part of the net earnings of which inures to the benefit of any private individual or shareholder. As used in this subsection, the word "dues" means only sums paid or incurred by members on a monthly, quarterly, annual, or other periodic basis for the privilege of being members of such club and any pro rata assessment made against the members as such; the word "dues" does not include any sums paid or incurred by members or their guests for food, beverages, or other tangible personal property purchased or for the use of the club's social, athletic, sporting, and other facilities; and the term "initiation fees" includes any payment, contribution, or loan, required as a condition precedent to membership, whether or not any such payment, contribution, or loan is evidenced by a certificate of interest or indebtedness.

(15) *Social Security benefits.*—Insurance benefit payments received under section 402 (a), (b), (c), (d), (e), (f), (g), (h), (i), of title 42, U.S. Code.

(16) *Compensation received by aliens from certain international organizations.*—In the case of an individual who is not a national of the United States, salaries, wages, or compensation for personal services rendered as an employee of an international organization (as defined in section 1 of International Organizations Immunities Act (22 U.S.C. sec. 288)) which is entitled to enjoy privileges, exemptions, and immunities provided by such Act.

(17) *Foreign corporation real property investment income.*—Income derived by a foreign corporation authorized to invest in loans secured by real estate, which does not maintain any office, officer, agent, representative or employees for the purpose of making, maintaining, or liquidating such investment, in the District of Columbia, provided that the only activities of such foreign corporation in the District of Columbia, other than those of a liaison employee, are one or more of the following:

(A) the acquisition of loans (including the negotiation thereof) secured by mortgages or deeds of trust on real property, including leaseholds, situated in the District of Columbia pursuant to commitment agreements or arrangements made prior to or following the origination or creation of such loans: *Provided, however,* That nothing herein shall be deemed to permit servicing other than as permitted by subparagraph (D) of this paragraph (17);

(B) the physical inspection and appraisal of property in the District of Columbia as security for mortgages or deed of trust;

(C) the ownership, modification, renewal, extension, transfer, or foreclosure of such loans, or the acceptance of substitute additional obligors thereon;

(D) the making, collecting, and servicing of loans solely through a person authorized to engage in the District of Columbia in the business of servicing real estate loans for investors;

(E) maintaining or defending any action or suit or any administrative or arbitration proceeding arising as a result of such loans;

(F) the acquisition of title to property which is the security for such a loan in the event of default on such loan, either by foreclosure, sale, or agreement in lieu thereof;

(G) pending liquidation of its investment within such period, not to exceed one year, as the Commissioners may by regulation prescribe, operating, maintaining, renting or otherwise dealing with, selling or disposing of, real property acquired by foreclosure, sale, or by agreement in lieu thereof: *Provided,* That if, upon the expiration of the period prescribed by the Commissioners, such property has not been sold or otherwise disposed of, such foreign corporation shall be subject to tax on all of the income derived by the corporation arising out of its ownership of such property, but such liability shall not be construed as affecting the exclusion from gross income of income from other loans made or acquired by it in accordance with this paragraph (17).

Income derived from the ownership of real property and not excludible from gross income as provided in this paragraph (17) shall be reported to the Commissioners by the person servicing the corporation's loans in the District of Columbia or by a participating bank in the District of Columbia at such times and in such manner, together with such information, as the Commissioners may by regulation require, and if there be no such person servicing loans or participating bank, then the corporation shall itself make such report of income including any other income derived from District of Columbia sources which is includible in gross income under this article. Any person or corporation who shall fail to report such income to the Commissioners, as herein provided, shall be guilty of a misdemeanor and shall be fined not more than $500.

As used herein, the term "liaison employee" shall mean a person who does not engage in or make, maintain, or liquidate any investment of the foreign corporation and who is engaged by the foreign corporation solely for the purpose of establishing and maintaining contacts with governments and international bodies and agencies thereof; arranging conferences for, receiving and furnishing legislative publications and other information or material of interest to, transmitting information for, and arranging transportation or other accommodations for, officers or other personnel of such foreign corporation within, or to and from, the District of Columbia.

(c) *Adjusted gross income.*—The words "adjusted gross income" as used in this subchapter mean gross income less deductions allowed under section 47–1557b(a): *Provided, however,* That such deductions were directly incurred in carrying on a trade or business: *And provided further,* That in determining adjusted gross income, no deductions shall be allowed for charitable contributions, alimony payments, medical and dental expenses, an optional standard deduction, losses of property not connected with trade or business, or for an allowance for salaries or compensation for personal services of the person or persons liable for the tax. (July 16, 1947, 61 Stat. 335, Art. I, title III, § 2; May 3, 1948, 62 Stat. 207, ch. 246, § 3; May 27, 1949, 63 Stat. 130, ch. 146, title IV, §§ 403, 420; Sept. 4, 1957, 71 Stat. 605, Pub. L. 85–281, §§ 1, 3; June 27, 1960, 74 Stat. 219, Pub. L. 86–522, § 1; Sept. 19, 1966, 80 Stat. 812, Pub. L. 89–591, § 1.)

REFERENCES IN TEXT

Section 104(a)(4) of the Internal Revenue Code of 1954, referred to in subsec. (b)(9), is classified to U.S. Code, title 26, § 104(a)(4).

AMENDMENTS

1966—Subsection (b)(17) added by act Sept. 19, 1966.

1960—Subsec. (b)(16) added by act June 27, 1960.

1957—Subsec. (b)(9) amended generally by act Sept. 4, 1957, § 3. Prior to such amendment, subsection read as follows: "Payments of benefits made to or on account of a beneficiary under any of the laws relating to veterans."

Subsec. (b)(15) added by act Sept. 4, 1957, § 1.

1949—Subsec. (b)(14) added by act May 27, 1949, § 420.

Subsec. (c) added by act May 27, 1949, § 403.

1948—Subsec. (b)(13) added by act May 3, 1948.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act Sept. 19, 1966, as effective on Sept. 19, 1966, see § 3 of such act, set out as note under § 29–933.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 2 of act June 27, 1960, provided that: "The amendment made by this Act [adding subsec. (b)(16)] shall apply only to taxable years beginning after December 31, 1960."

EFFECTIVE DATE OF 1957 AMENDMENT

Section 8 of act Sept. 4, 1957, provided that: "The amendments made by sections 1, 2, 3, 4, and 5 of this Act [to this section and sections 47–1557b, 47–1567a and 47–1567b] shall be applicable to taxable years beginning after December 31, 1956. The amendment made by section 6 of this Act [to section 47–1208] shall be effective on July 1 next following the date of approval of this Act [Sept. 4, 1957]. The amendment made by section 7 of this Act [to section 47–1591(b)] shall be applicable to the calendar year 1958 and subsequent calendar years."

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act May 27, 1949, applicable to taxable years or portions thereof beginning after the 31st day of December 1948, see section 421 of act May 27, 1949, set out as a note under § 47–1551c.

EFFECTIVE DATE OF 1948 AMENDMENT

Amendment of section by act May 3, 1948, applicable to the taxable year or part thereof beginning on the 1st day of January 1948, and to succeeding taxable years, see section 5 of the act May 3, 1948, set out as a note under § 47–1551c.

NOTES TO DECISIONS

Business loss

Where taxpayer buys improved property for use in trade or business with intent of razing buildings thereon and then subsequently demolishes them, he has not suffered a "loss in trade or business" within District of Columbia Income and Franchise Tax Act of 1947, but rather the property represents capital investment and amount paid for it plus expenses incurred in removing existing buildings, should be treated as cost of the land, even if contemplated plans for use of property are not realized or if buildings are demolished but not replaced or if demolition enhances rather than diminishes value of property. *Reliable Home Appliances* v. *District of Columbia* (D.C. App. 1966, 219 A. 2d 501).

Evidence established that it was the absolute intention of directors of corporate taxpayer at time of acquisition by corporation of property to raze existing dwelling on property, in suit for refund of corporation franchise tax paid after disallowance of claimed deduction as loss in trade or business the sum representing the claimed value of structure plus wrecking cost. *Id.*

Where it was absolute intention of directors of corporate taxpayer at time they acquired property to raze existing dwelling thereon, corporation was not entitled to claim

a loss from destruction of building for purposes of corporate franchise tax. *Id.*

Capital gains

In determining whether capital gain resulted from sale of entire business for District of Columbia income and franchise tax purposes, factors usually considered as elements of good will are expectation that business will continue to enjoy a certain amount of patronage and that efficiency will be continued because persons employed are highly trained in performance of their jobs and can be expected to continue their employment. *District of Columbia* v. *ACF Industries, Inc.* (1965, 350 F. 2d 795, 122 U.S. App. D.C. 12).

In determining whether capital gain resulted from sale of entire business for District of Columbia income and franchise tax purposes, taxpayer has initial burden of establishing both existence of good will and value to be assigned to it; if parties to sale of business have allocated value of good will by agreement, great weight should be given to such allocation; in cases where there is no allocation by agreement, proper allocation can be made only by considering the entire business in light of surrounding conditions up to the time of the sale. *Id.*

In determining whether capital gain resulted from sale of entire business for District of Columbia income and franchise tax purposes, resolution of problem as to how much of price paid for business, if any, should be allocated to good will requires determination whether any good will existed at time of sale and, if so, what its value was. *Id.*

For District of Columbia income and franchise tax purposes, good will can qualify as a capital asset if held for the required length of time. *Id.*

In determining in sale of business whether good will, existed for required capital asset holding period to qualify for capital gain treatment for District of Columbia income and franchise tax purposes, it should be assumed, in absence of some significant event which would fix acquisition of good will at some time after commencement of business, that it came into being at time business established itself as a going concern. *Id.*

Under rule that in determining whether gain from sale of business is entitled to capital gains treatment in computing District of Columbia income and franchise tax the sale of entire business is treated as sale of an aggregate of individual assets, total purchase price must be apportioned among the assets of the business, each asset being assigned an amount related to reasonable market value at time of sale. *Id.*

In absence of countervailing policies, federal rule under which sale of entire business is treated as a sale of an aggregate of individual assets to be separately matched against definition of capital assets was applied to determine whether gain from sale of business was entitled to capital gains treatment in computing District of Columbia income and franchise tax. *Id.*

Dividends

Where corporation liquidates entirely, distribution from its earnings constitutes dividend for District of Columbia income tax purposes.

Purported sale of corporate stock by taxpayer, who was majority stockholder of corporation, who had controlled operation of corporation, and who, in negotiating sale, dominated course of dealings prescribed by him, at rates apparently fixed by him, to end that he receive his share of corporation's capital and its previously undistributed earnings, constituted dividend, for income tax purposes, and not sale of capital assets so as to exclude gain from gross income. *B. W. Doyle* v. *District of Columbia* (1966, 363 F. 2d 694, 124 U.S. App. D.C. 207).

Where corporation sold all of its angible assets, in return for which it received cash or its equivalent, and proceeds of the sale were reflected on corporation's books as earned surplus, when such funds were distributed in the course of corporation's liquidation the estate which managed the corporation received a taxable dividend. *Estate of Migical John Uline* v. *District of Columbia* (1966, 360 F. 2d 820, 124 U.S. App. D.C. 5).

Gross income

"Gross income" within District of Columbia income tax statute did not mean, without more, "income derived from any source whatever," and scope of phrase is limited by exceptions built into code. *District of Columbia* v. *H. Goldman and Y. D. Goldman* (1963, 328 F. 2d 520, 117 U.S. App. D.C. 219).

Taxable income

Proceeds received by major league baseball club from sales of players to newly established major league clubs in other cities, constituted "income" to club within District of Columbia Franchise Tax Act, despite fact that such transactions were incident to transfer of operations of District of Columbia club to other city. *Washington American League Base Ball Club Inc.* v. *District of Columbia* (1965, 349 F. 2d 179, 121 U.S. App. D.C. 202).

Proceeds from sale by major league baseball club of four players who had been with club more than two years did not constitute nontaxable gain from sale of capital assets, under District of Columbia Franchise Tax Act, in view of club's established practice of not treating players' contracts as capital assets. *Id.*

Under this subchapter, providing that gain realized from sale or exchange of property held by taxpayer for more than two years is not taxable income, gain attributable to sale of license was not taxable to taxpayer, which sold its radio and television station, together with license for operation thereof, on July 28, 1950, where taxpayer's predecessor in title had been issued a station construction permit in 1946, notwithstanding fact that current station license had been issued in May of 1950. *District of Columbia* v. *General Teleradio, Inc.* (1956, 230 F. 2d 830, 97 U.S. App. D.C. 280).

Where taxpayer's laundry plant was located in Virginia and many of its customers were located in the District of Columbia and to some of its customers it supplied its own articles which it cleaned and laundered and picked up and delivered and such work was performed outside the district, it was not "work done and services performed" in the District within this subchapter and the charges therefor were not apportionable or allocable to the District in calculating income taxes. *Industrial Coverall Laundry Corp.* v. *District of Columbia* (1951, 188 F. 2d 669, 88 U. S. App. D. C. 266).

Where taxpayer had a laundry plant in Virginia and many of its customers were located in the District of Columbia and to some customers, taxpayer furnished a supply of its own articles each week for a consideration with pick up and delivery service and the cleaning thereof was done in the plant in Virginia, source of income from the arrangement was the use or rental of the articles with pick up and delivery incidental thereto and in addition the cleaning and laundry, the latter being service and the income fairly attributable to the use or rental of the articles should be allocated to the district, in calculating income tax. *Id.*

Trade or business

Petitioner who purchased second-trust notes at discount, investigated credit of makers and inspected security to ascertain that value justified loan, made his own collections, maintained records of payments and followed up delinquent debtors by telephone or letter, was not engaged in investment of funds in securities but was engaged in "business or commercial activity" within statute imposing tax upon income of unincorporated businesses for privilege of carrying on or engaging in any trade or business. *Stone* v. *District of Columbia* (1952, 198 F. 2d 601, 91 U. S. App. D. C. 140).

§ 47–1557b. Deductions.

(a) Deductions allowed.—The following deductions shall be allowed from gross income in computing net income:

(1) *Expenses.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business (except as otherwise provided herein), traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the

taxpayer has not taken or is not taking title or in which he has no equity.

(2) *Interest.*—All interest paid or accrued, according to the taxpayer's method of accounting, within the taxable year.

(3) *Taxes.*—All taxes imposed upon the taxpayer and paid or accrued during the taxable year except—

(A) income taxes;

(B) franchise taxes imposed by this article;

(C) estate, inheritance, legacy, succession, and gift taxes;

(D) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(E) taxes paid to any State, Territory, county, or municipality on property, business, or occupation the income from which is not taxable under this subchapter.

(4) *Losses.*—Losses sustained during the taxable year and not compensated for by insurance or otherwise—

(A) if incurred in a trade or business; or

(B) if incurred in any transaction entered into for the production or collection of income subject to tax under this subchapter, or for the management, conservation, or maintenance of property held for the production of income subject to tax under this subchapter, though not connected with any trade or business; or

(C) of property not connected with a trade or business; if such losses arise from fires, storms, shipwrecks, thefts, or other casualty: *Provided, however,* That no such loss shall be allowed as a deduction under this subsection if such loss is claimed as a deduction for inheritance- or estate-tax purposes: *And provided further,* That this subsection shall not be construed to permit the deduction of a los of any capital asset as defined in this subchapter.

(5) *Bad debts.*—Debts ascertained to be worthless and charged off within the taxable year or, in the discretion of the Assessor, a reasonable addition to a reserve for bad debts. When satisfied that a debt is recoverable only in part, the Assessor may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction. No debt which existed prior to January 1, 1939, shall be allowed as a deduction.

(6) *Insurance premiums.*—All fire-, tornado-, and casualty-insurance premiums paid during the taxable year in connection with property held for investment or used in a trade or business, the income from which is taxable under this subchapter.

(7) *Depreciation.*—A reasonable allowance for exhaustion, wear, and tear of property used in the trade or business, including a reasonable allowance for obsolescence; and including in the case of natural resources allowances for depletion as permitted by reasonable rules and regulations which the Commissioners are hereby authorized to promulgate. The basis upon which such allowances are to be computed is the basis provided for in section 47–1583e.

(8) *Charitable contributions.*—Contributions or gifts, actually paid within the taxable year to or for the use of any religious, charitable, scientific, literary, military, or educational institution, the activities of which are carried on to a substantial extent in the District, and no part of the net income of which inures to the benefit of any private shareholder or individual: *Provided, however,* That such deductions shall be allowed only in an amount which in the aggregate of all such deductions does not exceed 15 per centum of the adjusted gross income.

(9) *Medical, dental, and so forth, expenses of individuals.*—Expenses in the case of residents, paid by the taxpayer during the taxable year, not compensated for by insurance or otherwise, for the medical care of the taxpayer, his spouse, or dependents as defined in this subchapter. The term "medical care", as used in this subsection, shall include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of diseases, or for the purpose of effecting healthier function of the body (including amounts paid for accident or health insurance): *Provided, however,* That a taxpayer may deduct only such expenses as exceed 5 per centum of his adjusted gross income, or 5 per centum of the aggregate adjusted gross income in the case of husband and wife filing joint return: *And provided further,* That the maximum deduction for the taxable year shall not exceed $2,500 in the case of a husband and wife filing a joint return, or $1,250 in the case of all other residents.

(10) *Alimony or separate maintenance.*—In the case of residents, amounts paid as alimony or separate maintenance pursuant to and under a decree or judgment of a court of record of competent jurisdiction to adjudge or decree that the taxpayer pay such alimony or separate maintenance: *Provided, however,* That all amounts allowed as a deduction under this subsection shall be reported and taxed as income of the recipient thereof if such recipient is a resident as defined in this subchapter.

(11) *Contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan.*—In the return of an employer, contributions made by such employer to an employees' trust or annuity plan and compensation under a deferred-payment plan to the extent that deductions for the same are allowed the taxpayer under the provisions of section 23(p) of the Federal Internal Revenue Code.

(12) *Nontrade or nonbusiness expense.*—In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income taxable under this subchapter.

(13) *Optional standard deduction and irrevocable election.*—In lieu of the foregoing deductions, any resident may elect to deduct for the taxable year an optional standard deduction of 10 per centum of the adjusted gross income or $1,000, whichever is lesser; in the case of joint returns filed by husband and wife living together, the combined standard deduction shall be limited to 10

per centum of the adjusted gross income of both, or $1,000, whichever is lesser; in the case of separate returns by husband and wife living together, the standard deduction of each spouse shall be limited to 10 per centum of the adjusted gross income of that spouse or $500, whichever is lesser, but the standard deduction shall be allowed to neither if the net income of one of the spouses is determined by itemizing the deductions. The option provided in this paragraph shall not be permitted on any return filed for any period less than a full calendar or full fiscal year.

The election to claim the optional standard deduction, or to itemize deductions, shall be irrevocable for the taxable year for which the election is made.

(14) *Allocation of deductions.*—In the case of corporations and unincorporated businesses, the deductions provided for in this section shall be allowed only for and to the extent that they are connected with income arising from sources within the District within the meaning of sections 47–1580 to 47–1580b; and the proper apportionment and allocation of the deductions to be allowed shall be determined by the Assessor under formula or formulas provided for in section 47–1580a.

(15) *Reasonable allowance for salaries.*—A reasonable allowance for salaries or other compensation for personal services actually rendered: *Provided, however,* That in the case of an unincorporated business the aggregate deduction for services rendered by the individual owners or members actively engaged in the conduct of the unincorporated business shall in no event exceed 20 per centum of the net income of such business computed without benefit of this deduction: *Provided further,* That nothing herein contained shall be construed to exempt any salary or other compensation for personal services from taxation as a part of the taxable income of the person receiving the same.

(b) Deductions not allowed.—In computing net income, no deductions shall be allowed in any case for—

(1) Personal, living, or family expenses;

(2) Any amount paid out for new buildings or for permanent improvements or betterments, made to increase the value of any property or estate;

(3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; and

(4) Premiums paid on any life-insurance policy covering the life of any officer or employee or of any person financially interested in any trade or business carried on by the taxpayer when the taxpayer is directly or indirectly a beneficiary under such policy.

(5) If the net income of an unincorporated business for the taxable year is in excess of the exemption provided in section 47–1574c, no deduction which is allowed or allowable under subsection (a) of this section from the gross income of any unincorporated business subject to the tax imposed by sections 47–1574 to 47–1574e shall be allowed as deduction in the return and computation of the net income of any person entitled to share in the net income of such unincorporated business.

(6) *Capital losses.*—Losses from the sale or exchange of any capital asset as defined in this subchapter.

(July 16, 1947, 61 Stat. 337, ch. 258, Art. I, title III, § 3; May 27, 1949, 63 Stat. 130, ch. 146, title IV, §§ 404–409; Mar. 31, 1956, 70 Stat. 69, ch. 154, §§ 3, 4; Sept. 4, 1957, 71 Stat. 606, Pub. L. 85–281, § 4.)

REFERENCES IN TEXT

Section 23(p) of the Federal Internal Revenue Code, referred to in subsec. (a)(11), is a reference to the Internal Revenue Code of 1939, and is now covered by section 404 of the Internal Revenue Code of 1954. See U.S. Code, title 26, § 404.

AMENDMENTS

1957—Subsec. (a)(13) amended by act Sept. 4, 1957, which increased the maximum amount of the standard deduction from 10 per centum of the adjusted gross income or $500, whichever is lesser, to 10 per centum of the adjusted gross income or $1,000, whichever is lesser, and changed the deduction in the case of joint returns from 10 per centum of the adjusted gross income of each or $500 for each, whichever is lesser, to 10 per centum of the adjusted gross income of both, or $1,000, whichever is lesser.

1956—Subsec. (a)(9) amended by act Mar. 31, 1956, § 3, which substituted "the maximum deduction for the taxable year shall not exceed $2,500 in the case of a husband and wife filing a joint return, or $1,250 in the case of all other residents" for "the maximum deduction for the taxable year shall not exceed $1,250", and permitted the deduction of such expenses as exceed 5 per centum of the aggregate adjusted gross income in the case of a husband and wife filing joint return.

Subsec. (a)(13) amended by act Mar. 31, 1956, § 4, which changed the standard deduction from 10 per centum of the net income or $500, whichever is lesser to 10 per centum of the adjusted gross income or $500, whichever is lesser, permitted a deduction of $500 or 10 per centum of the adjusted gross income, whichever is lesser, to both husband and wife, provided that the election shall be irrevocable for the taxable year for which made and prohibited later use of the specific deductions, and inserted proviso which prohibits allowance of the standard deduction in the case of husband and wife living together if the net income of one of the spouses is determined without regard to the standard deduction.

1949—Subsec. (a)(1) amended by act May 27, 1949, § 404, which substituted "trade or business (except as otherwise provided herein)," for "trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered:", and eliminated proviso which stated that nothing shall be construed to exempt any salary or other compensation for personal services from taxation as a part of the taxable income of the person receiving the same.

Subsec. (a)(4)(C) amended by act May 27, 1949, § 405, to include losses from theft.

Subsec. (a)(8) amended by act May 27, 1949, § 406, which substituted "does not exceed 15 per centum of the adjusted gross income" for "does not exceed 15 per centum of net income as computed without the benefit of this subsection."

Subsec. (a)(9) amended by act May 27, 1949, § 407, which substituted "such expenses as exceed 5 per centum of his adjusted gross income" for "such expenses as exceed 5 per centum of his net income, or 5 per centum of the aggregate net income in the case of husband and wife filing a joint return, computed with the benefit of subsection (8) of this section but without the benefit of this subsection", and "the maximum deduction for the taxable year shall not exceed $1,250" for "the maximum deduction for the taxable year shall not exceed $2,500 in the case of a husband and wife filing a joint return, or $1,250 in the case of all other residents."

Subsec. (a)(13) amended by act May 27, 1949, § 408, which changed the deduction from $500 for residents whose gross income less allowance for dependents is $5,000 or more to 10 per centum of the net income or $500,

whichever is lesser, and eliminated proviso which prohibited allowance of the standard deduction in the case of husband and wife living together if the net income of one of the spouses is determined without regard to the standard deduction or by use of the optional method provided in title VI, section 4(a).

Subsec. (a)(15) added by act May 27, 1949, § 409.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 4, 1957, applicable to taxable years beginning after Dec. 31, 1956, see section 8 of act Sept. 4, 1957, set out as a note under § 47–1557a.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, applicable to taxable years beginning after Dec. 31, 1955, see section 19 of act Mar. 31, 1956, set out as a note under § 47–1551c.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of subsec. (a)(13) by act May 27, 1949, applicable to taxable years beginning after Dec. 31, 1949, and amendment of subsecs. (a) (1), (4), (8) and (9) and enactment of subsec. (a)(15) applicable to taxable years or portions thereof beginning after Dec. 31, 1948, see section 421 of act May 27, 1949, set out as a note under § 47–1551c.

NOTES TO DECISIONS

Damages

Damages paid by major league baseball club to minor league and to owners of minor league clubs, resulting from transfer of major league club's operation to minor league city, constituted "capital investment," and were improperly deducted as business expense, within District of Columbia Francise Tax Act. *Washington American League Base Ball Club, Inc.* v. *District of Columbia,* (1965, 349 F. 2d 179, 121 U.S. App. D.C. 202).

Deductions

Where taxpayer made advances to a corporation that later went bankrupt, findings of Tax Court that evidence was insufficient to show that corporation ever became obligated to repay advances were not erroneous where taxpayer failed to establish facts necessary to substantiate his claimed deduction. *N. Bord and A. R. Bord* v. *District of Columbia* (1965, 344 F. 2d 560, 120 U.S. App. D.C. 175).

Depreciation method

Where taxpayer received real property in corporate dissolution in 1953, proper depreciation basis of these properties could not exceed total of taxpayer's interest in earned surplus account at time of dissolution, and where such amount had already been more than exhausted by depreciation deductions taken by taxpayer for years 1953 through 1959 no allowance for 1960 and 1961 District of Columbia income taxes would be permitted. *B. W. Oppenheimer* v. *District of Columbia* (1966, 363 F. 2d 708, 124 U.S. App. D.C. 221).

The proper basis for computing depreciation on corporate owned building allowable to taxpayer who had purchased all of the corporation stock for cash and then liquidated the same and transferred the assets to himself was a proper proportion of the cost to taxpayer which was the value of stock he turned over for the building. *C. A. Snow, et ano.* v. *District of Columbia* (1965, 361 F. 2d 523, 124 U.S. App. D.C. 69).

District of Columbia Income and Franchise Tax Act revealed congressional intent to permit allowance for depreciation based on the declining balance method. *Broadcasting Publications, Inc.* v. *District of Columbia; District of Columbia* v. *Broadcasting Publications, Inc.* (1963, 313 F. 2d 554, 114 U.S. App. D.C. 163).

Taxpayer would be allowed use of declining balance method of depreciation in determining tax due under District of Columbia Income and Franchise Tax Act, in absence of regulation on such subject pursuant to such Act or showing by District that such method was unreasonable. *Id.*

Loss in trade

Where taxpayer buys improved property for use in trade or business with intent of razing buildings thereon and then subsequently demolishes them, he has not suffered a "loss in trade or business" within District of Columbia Income and Franchise Tax Act of 1947, but rather the property represents capital investment and amount paid for it, plus expenses incurred in removing existing buildings, should be treated as cost of the land, even if contemplated plans for use of property are not realized or if buildings are demolished but not replaced or if demolition enhances rather than diminishes value of property. *Reliable Home Appliances, Inc.* v. *District of Columbia* (D.C. App. 1966, 219 A. 2d 501).

Evidence established that it was the absolute intention of directors of corporate taxpayer at time of acquisition by corporation of property to raze existing dwelling on property, in suit for refund of corporation franchise tax paid after disallowance of claimed deduction as loss in trade or business the sum representing the claimed value of structure plus wrecking cost. *Id.*

Where it was absolute intention of directors of corporate taxpayer at time they acquired property to raze existing dwelling thereon, corporation was not entitled to claim a loss from diestruction of building for purposes of corporate franchise tax. *Id.*

TITLE IV.—ACCOUNTING PERIODS, INSTALLMENT SALES, AND INVENTORIES

§ 47–1561. Accounting periods.

The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Assessor does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in section 47–1551c (j) or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. If the taxpayer makes a Federal income-tax return, his income shall be computed, for the purposes of this title, on the basis of the same calendar or fiscal year as in such Federal income-tax return, if the basis is accepted and approved by the Commissioner of Internal Revenue. (July 16, 1947, 61 Stat. 339, ch. 258, Art. I, title IV, § 1.)

§ 47–1561a. Period in which items of gross income included.

The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer unless, under methods of accounting permitted under section 47–1561, any such amounts are to be properly accounted for as of a different period. In the case of death of a taxpayer on the cash basis, no amount will be accrued on his final return; and on the accrual basis, amounts (except amounts includible in computing a partner's net income) accrued only by reason of the death of the taxpayer shall not be included in computing net income for the period in which falls the date of the taxpayer's death, but such amounts shall be included in the income of the person receiving such amounts by inheritance or survivorship from the decedent. (July 16, 1947, 61 Stat. 339, ch. 258, Art. I, title IV, § 2.)

§ 47–1561b. Period for which deductions and credits taken.

The deductions and credits provided for in this subchapter shall be taken for the taxable year in

which "paid or accrued" or "paid or incurred", dependent upon the method of accounting upon the basis of which the net income is computed unless, in order to clearly reflect the income, the deductions or credits should be taken as of a different period. In the case of death of a taxpayer on the cash basis, no amount will be allowed as a deduction which was accrued up to the date of the taxpayer's death; and on the accrual basis, no amount (except amounts includible in computing a partner's net income) accrued only by reason of the death of the taxpayer shall be included in computing net income for the period in which falls the date of the taxpayer's death but such amounts shall be deductible by the estate or other person who paid them or is liable for their payment. (July 16, 1947, 61 Stat. 340, ch. 258, Art. I, title IV, § 3.)

§ 47–1561c. Installment sales.

If a person reports any portion of his income from installment sales for Federal income-tax purposes under section 44 of the Federal Internal Revenue Code, and as the same may hereafter be amended and if such income is subject to tax under this subchapter, he may report such income under this subchapter in the same manner and upon the same basis as the same was reported by him for Federal income-tax purposes, if such method of reporting is accepted and approved by the Commissioner of Internal Revenue. (July 16, 1947, 61 Stat. 340, ch. 258, Art. I, title IV, § 4; May 27, 1949, 63 Stat. 131, ch. 146, title IV, § 410.)

REFERENCES IN TEXT

Section 44 of the Federal Internal Revenue Code, referred to in the text, is a reference to section 44 of the Internal Revenue Code of 1939, which is now covered by sections 453 and 7101 of the Internal Revenue Code of 1954. See 26 U.S.C. §§ 453, 7101.

AMENDMENT

1949—Act May 27, 1949, substituted "the Federal Internal Revenue Code" for "Title 26, U. S. Code".

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act May 27, 1949, applicable to taxable years or portions thereof beginning after Dec. 31, 1948, see section 421 of act of May 27, 1949, set out as a note under § 47–1551c.

NOTES TO DECISIONS

Regulations of Commissioner

Where it appeared that regulation amendments promulgated by commissioners of the District of Columbia and made applicable to any case in which liability of taxpayer had not been finally determined by final decision of court might be susceptible to different interpretation than regulations under which case had been decided by Tax Court, case would be remanded to Tax Court so that it could address itself to applicability and effect of amendments. *The May Department Stores Co.* v. *District of Columbia* (1966, 364 F. 2d 689, 124 U.S. App. D.C. 296).

§ 47–1561d. Inventories.

Whenever in the opinion of the Assessor the use of inventories is necessary in order to properly determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Assessor may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income. (July 16, 1947, 61 Stat. 340, ch. 258, Art. I, title IV, § 5.)

§ 47–1561e. Assessor may reject method of accounting employed by taxpayer.

Notwithstanding any other provisions of this subchapter, the Assessor is hereby authorized to reject any return of income reported on a cash basis where, in his opinion, the net income of the taxpayer is not properly reflected and cannot be determined on such basis, and to require the return to be filed on such a basis as in his opinion will properly reflect the net income of the taxpayer. (July 16, 1947, 61 Stat. 340, ch. 258, Art. I. Title IV, § 6.)

TITLE V.—RETURNS

§ 47–1564. Form of returns and duty to file.

(a) **Form of returns.**—The Assessor is hereby authorized and directed to prescribe the forms of returns. All returns required under this title shall be filed on the forms and in the manner prescribed by the Assessor.

(b) **Taxpayer to make return whether form is sent or not.**—Blank forms of returns of income shall be supplied by the Assessor. It shall be the duty of the Assessor to obtain an income-tax return from every taxpayer who is liable under this subchapter to file such return; but this duty shall in no manner diminish the obligation of the taxpayer to file a return without being called upon to do so.

(c) **Information returns.**—Every person subject to the jurisdiction of the District in whatever capacity acting, including receivers or mortgagors of real or personal property, fiduciaries, partnerships, and employers making payment of dividends, interest, rent, premiums, annuities, compensations, remunerations, emoluments, or other income to any person subject to tax under this subchapter, shall render such returns thereof to the Assessor as he may by rule prescribe. (July 16, 1947, 61 Stat. 340, ch. 258, Art. I, title V, § 1.)

§ 47–1564a. Requirement—Who must file.

Each of the following persons shall file a return with the Assessor stating specifically the items of his gross income and the items claimed as deductions and credits allowed under this subchapter, and such other information for the purpose of carrying out the provisions of this subchapter as the Assessor may require:

(a) *Residents and nonresidents.*—Every nonresident of the District receiving income subject to tax under this subchapter and every resident of the District, except fiduciaries, when—

(1) his gross income for the taxable year exceeds $1,000, if single, or if married and not living with husband or wife; or

(2) his gross income for the taxable year exceeds $2,000 if married and living with husband or wife; or

(3) his gross sales or gross receipts from any trade or business, other than an unincorporated business subject to tax under sections 47–1574 to 1574e, exceeds $5,000, regardless of the amount of his gross income; or

(4) the combined gross income for the taxable year of a husband and wife living together exceeds $2,000 in the aggregate, or the combined gross sales or gross receipts from any trade or business,

other than an unincorporated business subject to tax under sections 47–1574 to 1574e, exceeds $5,000 regardless of the amount of their gross income.

(b) *Fiduciaries.*—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) for—

(1) every individual for whom he acts having a gross income for the taxable year of $1,000 or over, if single, or if married and not living with husband or wife;

(2) every individual for whom he acts having a gross income for the taxable year of $2,000 or over, if married and living with husband or wife;

(3) every estate for which he acts, the gross income of which for the taxable year is $1,000 or over;

(4) every trust for which he acts, the gross income of which for the taxable year is $1,000 or over.

(c) *Joint fiduciaries.*—A return by one of two or more joint fiduciaries filed with the Assessor shall be sufficient compliance with the provisions of subsection (b) of this section.

(d) If any resident or nonresident or any fiduciary is unable to make his own return, the return shall be made by his duly authorized agent.

(e) (1) *Corporations.*—Every corporation engaging in or carrying on any trade or business within the District or receiving income from sources within the District within the meaning of sections 47–1580 to 47–1580b. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or are engaged in or carrying on the trade or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns.

(2) Affiliated corporations shall file separate returns unless permitted by the Assessor to file consolidated returns.

(f) *Unincorporated businesses.*—Every unincorporated business engaging in or carrying on any trade or business within the District or receiving income from sources within the District within the meaning of sections 47–1580 to 47–1580b having a gross income of more than $10,000, regardless of whether or not it has a net income. Such returns shall be made by the taxpayer or taxpayers liable for the payment of the tax.

(g) *Partnerships.*—Every partnership, other than partnerships subject to the taxes imposed by sections 47–1574 to 47–1574e on unincorporated businesses, engaged in any trade or business, or receiving income from sources within the District. There shall be included in such return the names and addresses of the individuals who would be entitled to share in the net income of the partnership, if distributed, and the amount of distributive share of each individual. (July 16, 1947, 61 Stat. 341, ch. 258, Art. I, title V, § 2; May 27, 1949, 63 Stat. 131, ch. 146, title IV, § 411; Mar. 31, 1956, 70 Stat. 69, ch. 154, § 5.)

AMENDMENTS

1956—Subsec. (a) amended by act Mar. 31, 1956, which enacted provisions identical to subsection (a) as originally enacted by act July 16, 1947.

Subsec. (b) amended by act Mar. 31, 1956, which changed provisions requiring the filing of returns in cases of individuals to reduce the gross amount of income necessary from $4,000 to $1,000 if the individual is single, or if married and not living with husband and wife, and from $4,000 to $2,000 if he is married and living with husband and wife, in cases of estates, from $4,000 to $1,000, and in cases of trusts, to require the filing if the gross income is $1,000 or over whereas prior to this amendment such filing was required if the net income was $100 or over.

1949—Subsec. (a) amended by act May 27, 1949, which substituted provisions requiring the filing of returns by any person whose gross income for the taxable year exceeds $4,000 for provisions which required returns to be filed by any person whose gross income for the taxable year exceeded $1,000, if single, or if married and not living with husband and wife, and $2,000 if married and living with husband and wife, reduced the $5,000 to $4,000 the amount of gross sales or gross receipts from a trade or business necessary to require the filing of a return, inceased the minimum amount of combined gross income in the case of a husband and wife living together from $2,000 to $4,000, and required each spouse to have gross income in excess of $500.

Subsec. (b) amended by act May 27, 1949, which substituted provisions requiring fiduciaries to file returns for every individual for whom they act having a gross income for the taxable year of $4,000 or over, regardless of the individual's net income for provisions which required the filing of returns in cases where the individual, if single, or if married and not living with husband or wife, had net income of $1,000 or over, if married and living with husband and wife, had net income of $2,000 or over, and in all cases if the individual had a gross income of $2,000 or over, regardless of the amount of his net income, reduced from $5,000 to $4,000 the minimum amount of gross income of an estate necessary to file a return, and eliminated provisions which required the filing of a return in estates having a net income of $1,000 or over.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, applicable to taxable years beginning after Dec. 31, 1955, see section 19 of act Mar. 31, 1956, set out as a note under § 47–1551c.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act May 27, 1949, applicable to taxable years beginning after Dec. 31, 1949, see section 421 of act May 27, 1949, set out as a note under § 47–1551c.

§ 47–1564b. Filing of returns.

(a) Time and place for filing returns.—All returns of income for the preceding taxable year required to be filed under the provisions of section 47–1564 shall be filed with the Assessor on or before the 15th day of April in each year, except that such returns, if made on the basis of a fiscal year, shall be filed on or before the fifteenth day of the fourth month following the close of such fiscal year.

(b) Extension of time for filing returns.—The Assessor may grant a reasonable extension of time for filing the returns required by section 47–1564a whenever in his judgment good cause exists therefor, and he shall keep a record of every such extension. Except in case of a taxpayer who is not within the continental limits of the United States, no such extension shall be granted for more than six months, and in no case shall such extension be granted for more than one year. (July 16, 1947, 61 Stat. 342, ch. 258, Art. I, title V, § 3.)

§ 47–1564c. Divulging of information.

(a) Secrecy of returns.—Except to any official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee of the District to divulge or make known in

any manner the amount of income or any particulars relating thereto or the computation thereof set forth or disclosed in any return required to be filed under section 47–1564, and neither the original nor a copy of any such return desired for use in litigation in court shall be furnished where neither the District nor the United States is interested in the result of such litigation, whether or not the request is contained in an order of the court: *Provided, however,* That nothing herein contained shall be construed to prevent the furnishing to a taxpayer of a copy of his return upon the payment of a fee of $2.

(b) Reciprocal exchange of information with the United States and the several States.—Notwithstanding the provisions of this section, the Assessor may permit the proper officer of the United States or of any State imposing an income tax or his authorized representative to inspect income-tax returns filed with the Assessor or may furnish to such officer or representative a copy of any such income-tax returns provided the United States or such State grant substantially similar privileges to the Assessor or his representative or to the proper officer of the District charged with the administration of this title. The Bureau of Internal Revenue of the Treasury Department of the United States is authorized and required to supply such information as may be requested by the Assessor or Collector relative to any person subject to the taxes imposed by this subchapter.

(c) Publication of statistics.—Nothing contained in subsection (a) of this section shall be construed to prohibit the publicaton of statistics so classified as to prevent the identification of particular reports and the items thereof, or the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with any relevant information which in the opinion of the Assessor may assist in the collection of such delinquent taxes.

(d) Information which may be disclosed.—Nothing contained in subsection (a) of this section shall be construed to prohibit the Assessor, in his discretion, from divulging or making known any information contained in, or relating to, any report, application, license, or return required under the provisions of this subchapter other than such information as may be contained therein relating to the amount of income or any particulars relating thereto or the computation thereof.

(e) Penalties for violation of this section.—Any violation of the provisions of this section shall be a misdemeanor and shall be punishable by a fine not exceeding $1,000 or imprisonment for six months, or both, in the discretion of the court. All prosecutions under this section shall be brought in the Municipal Court of the District of Columbia on information by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia.

(f) Preservation of returns.—All reports, applications, and returns received by the Assessor under the provisions of this subchapter shall be preserved for six years, and thereafter until the Assessor orders them to be destroyed. (July 16, 1947, 61 Stat. 342, ch. 258, Art. I, title V, § 4.)

CHANGE OF NAME

The official title of the Bureau of Internal Revenue was changed to the Internal Revenue Service by Treas. Dept. Order 150–29, eff. July 9, 1953.

TITLE VI.—TAX ON RESIDENTS AND NONRESIDENTS

§ 47–1567. Definitions.

For the purposes of this subchapter, and unless otherwise required by the context, the words "taxable income" mean the entire net income of every resident, in excess of the personal exemptions and credits for dependents allowed by section 47–1567a and that portion of the entire net income of every nonresident which is subject to tax under sections 47–1574 to 47–1574e. (July 16, 1947, 61 Stat. 343, ch. 258, Art. I, title VI, § 1.)

§ 47–1567a. Personal exemptions and credit for dependents.

There shall be allowed to residents the following credits against net income:

(a) (1) An exemption of $1,000 for a single person or a married person not living with husband or wife.

(2) An additional exemption of $500 for the taxpayer if he has attained the age of sixty-five before the close of his taxable year, and an additional exemption of $500 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse has attained the age of sixty-five before the close of such taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) An additional exemption of $500 for the taxpayer if he is blind at the close of his taxable year, and an additional exemption of $500 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For purposes of this subsection, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year, such determination shall be made as of the time of such death. For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

(b) An exemption of $2,000 for a head of a family or a married person living with husband or wife. A husband and wife living together shall, in addition to the exemptions for age and for blindness allowed by subparagraphs (a) (2) and (a) (3) above, receive but one personal exemption of $2,000, but if such husband or wife make separate returns, the personal exemption of $2,000 shall be divided equally between them.

(c) An exemption of $500 for each dependent, as defined in this subchapter, whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $500, except that the ex-

emption shall not be allowed in respect of a married dependent who has made a joint return with his spouse for the taxable year beginning in such calendar year.

(d) If the status of a taxpayer changes during the taxable year with respect to his marital status the amount allowed under subsection (b) of this section shall be apportioned in accordance with the number of months before and after such change. For the purposes of this subsection, a fractional part of a month shall be disregarded unless it amounts to more than half a month, in which case it shall be considered as a month.

(e) Beginning with the first taxable year to which this article is applicable and in succeeding taxable years, the amounts allowed under subsections (a), (b), and (c) of this section shall be prorated to the day of death in the final return of a decedent dying before the end of the taxable year, and as of the date of death the personal exemption is terminated and not extended over the remainder of the taxable year.

(f) In the case of a return made for a fractional part of a taxable year, the personal exemptions and credits for dependents shall be reduced, respectively, to amounts which bear the same ratio to the full credits provided as the number of months in the period for which the return is made bear to twelve months. (July 16, 1947, 61 Stat. 343, ch. 258, Art I, title VI, § 2; May 27, 1949, 63 Stat. 132, ch. 146, title IV, § 412; Mar. 31, 1956, 70 Stat. 70, ch. 154, § 6; Sept. 4, 1957, 71 Stat. 605, Pub. L. 85–281, § 2.)

AMENDMENTS

1957—Act Sept. 4, 1957, authorized an additional exemption of $500 for persons over the age of 65 and for persons who are blind, and in cases where the taxpayer makes a separate return, $500 for his spouse if she is over 65 or if she is blind, and required spouses filing separate returns to divide the exemption equally between them.

1956—Act Mar. 31, 1956, reduced the taxpayer's exemption from $4,000 to $1,000 for a single person or a married person not living with his spouse, and to $2,000 for a head of a family or a married person living with his spouse, and authorized, in the case of a husband and wife living together, either spouse to take the full exemption or to divide the exemption between them.

1949—Act May 27, 1949, increased the taxpayer's exemption from $1,000 to $4,000.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 4, 1957, applicable to taxable years beginning after Dec. 31, 1956, see section 8 of act Sept. 4, 1957, set out as a note under § 47–1557a.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, applicable to taxable years beginning after Dec. 31, 1955, see section 19 of act Mar. 31, 1956, set out as a note under § 47–1551c.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act May 27, 1949, applicable to taxable years beginning after Dec. 31, 1949, see section 421 of act May 27, 1949, set out as a note under § 47–1551c.

§ 47–1567b. Imposition and rates of tax—Optional method of computation.

(a) There is hereby annually levied and imposed for each taxable year upon the taxable income of every resident a tax at the following rates:

Two and one-half per centum on the first $2,000 of taxable income.

Three per centum on the next $2,000 of taxable income.

Three and one-half per centum on the next $2,000 of taxable income.

Four per centum on the next $2,000 of taxable income.

Four and one-half per centum on the next $2,000 of taxable income.

Five per centum on the taxable income in excess of $10,000.

(b) In lieu of the method of computation prescribed by subsection (a), a resident reporting on a cash basis for any full calendar year who does not claim credit for taxes paid by him to any State or Territory of the United States or political subdivision thereof under the provisions of section 47–1567d on the whole or any part of his income for such calendar year and, if his gross income for such calendar year is $5,000 or less, and is derived solely from salaries, wages, dividends, and interest, may elect to pay the tax in accordance with a table to be included in regulations.

(1) In applying such table, to determine whether the taxpayer is entitled to the personal exemption of $1,000 or $2,000, his status on the last day of his taxable year, as defined in this subchapter, shall control.

(2) An individual not living with husband or wife on the last day of the taxable year for the purposes of this subchapter, shall be considered as a single person.

(3) The election given by this section as to the computation of tax due shall be considered to have been made if the taxpayer files the return prescribed for such computation and such election shall be final and irrevocable.

(4) If the taxpayer for any taxable year has filed a return computing his tax without regard to this section, he may not thereafter elect for such year to compute his tax under this section.

(5) This section shall not apply to any fiduciary or to any married resident living with husband or wife at any time during the taxable year whose spouse files a return and computes the tax without regard to this section or section 47–1557b (a)(13), as amended.

(6) If a husband and wife living together file separate returns, each shall be treated as a single person for the purposes of this section.

(July 16, 1947, 61 Stat. 344, ch. 258, Art. I, title VI, §§ 3, 4; May 27, 1949, 63 Stat. 132, ch. 146, title IV, § 413; May 18, 1954, 68 Stat. 117, ch. 218, title XII, § 1201; Mar. 31, 1956, 70 Stat. 70, ch. 154, §§ 7, 8; Sept. 4, 1957, 71 Stat. 606, Pub. L. 85–281, § 5; Sept. 30, 1966, 80 Stat. 858, Pub. L. 89–610, title VII, § 701.)

CODIFICATION

Section consolidates section 3 of act July 16, 1947, and section 4 of act July 16, 1947, as added by section 8 of act Mar. 31, 1956. Subsec. (a) of this section comprises section 3 of said act, and subsec. (b) of this section comprises section 4.

AMENDMENTS

1966—Act Sept. 30, 1966, increased individual income taxes by reducing taxable income brackets from $5,000 to $2,000, to which the prescribed rates ranging from 2½ to 5 percent will apply.

1957—Subsec. (b) amended by act Sept. 4, 1957, which substituted "$5,000" for "$10,000."

1956—Subsec. (a) amended by act Mar. 31, 1956, § 7, which increased the rate of tax on taxable income in excess of $20,000 from 4 to 4½ per centum and in excess of $25,000 from 4 to 5 per centum.

1954—Act May 18, 1954, increased the rate of tax from 1½ per centum on the first $5,000, 2 per centum on the next $5.000, 2½ per centum on the next $5,000, and 3 per centum on the taxable income in excess of $15,000, to 2½ per centum on the first $5,000, 3 per centum on the next $5,000, 3½ per centum on the next $5,000, and 4 per centum on the taxable income in excess of $15,000.

1949—Act May 27, 1949, increased the rate of tax from 1 per centum on the first $5,000, 1½ per centum on the next $5,000, 2 per centum on the next $5,000, 2½ per centum on the next $5,000, and 3 per centum on the taxable income in excess of $20,000, to 1½ per centum on the first $5,000, 2 per centum on the next $5,000, 2½ per centum on the next $5,000, and 3 per centum on the taxable income in excess of $15,000.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 4, 1957, applicable to taxable years beginning after Dec. 31, 1956, see section 8 of act Sept. 4, 1957, set out as a note under § 47–1557a.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, applicable to taxable years beginning after Dec. 31, 1955, see section 19 of act Mar. 31, 1956, set out as a note under § 47–1551c.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 1202 of act May 18, 1954, provided that: "The provisions of this title [amending subsec. (a) of this section] shall be applicable to taxable years beginning after December 31, 1953."

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act May 27, 1949, applicable to taxable years beginning after Dec. 31, 1949, see section 421 of act May 27, 1949, set out as a note under § 47–1551c.

RETROACTIVE EFFECT OF 1966 AMENDMENT

Section 702 of act Sept. 30, 1966, 80 Stat. 858, Pub. L. 89–610, title VII, provided: "The amendment [to subsec. (a) of this section] applicable to taxable years beginning after December 31, 1965".

CONSTRUCTION; SEVERABILITY OF PROVISIONS; RULES AND REGULATIONS

For construction of act Sept. 30, 1966, Pub. L. 89–610, amending this section, severability of provisions with respect thereto, and authority to make rules and regulations to carry out provisions thereof, see §§ 1003—1005 of such act, set out as a note under § 25–124.

§ 47–1567c. Repealed. May 27, 1949, 63 Stat. 132, ch. 146, Title IV, § 414.

Section, act July 16, 1947, 61 Stat. 344, ch. 258, Art. I, title VI, § 4, related to optional method of computation. Present section 4 of act July 16, 1947, which also relates to optional method of computation, is classified to subsection (b) of § 47–1567b.

EFFECTIVE DATE OF REPEAL

Repeal of section by act May 27, 1949, applicable to taxable years beginning after Dec. 31, 1949, see section 421 of act May 27, 1949, set out as a note under § 47–1551c.

§ 47–1567d. Credits against tax.

(a) **Credit allowed residents.**—The amount of tax payable under this title by an individual who, although a resident of the District of Columbia as defined in this subchapter, was nevertheless a bona fide domiciliary of any State or Territory of the United States or political subdivision thereof during the taxable year shall be reduced by the amount required to be paid by such individual as income or intangible personal property taxes, or both, for such taxable year to the State, Territory, or political subdivision thereof of which he was a domiciliary. The Assessor may require proof, satisfactory to him, of the payment of such income or intangible personal property taxes: *Provided, however,* That the credit provided for by this section shall not be allowed against any tax imposed under sections 47–1574 to 47–1574e.

(b) **Credit for tax withheld on wages.**—The amount deducted and withheld as tax under this subchapter during any calendar year upon the wages of any individual shall be allowed as a credit to the recipient of the income against the tax imposed by this subchapter, for taxable years beginning in such calendar year. If more than one taxable year begins in such calendar year such amount shall be allowed as a credit against the tax for the last taxable year so beginning. (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, title VI, § 5; Mar. 31, 1956, 70 Stat. 71, ch. 154, § 9.)

AMENDMENT

1956—Act Mar. 31, 1956, designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, applicable to taxable years beginning after Dec. 31, 1955, see section 19 of act Mar. 31, 1956, set out as a note under § 47–1551c.

TITLE VII.—TAX ON CORPORATIONS

§ 47–1571. Taxable income defined.

For the purposes of this title, and unless otherwise required by the context, the words "taxable income" mean the amount of net income derived from sources within the District within the meaning of sections 47–1580 to 47–1580b. (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, title VII, § 1.)

NOTES TO DECISIONS

Congressional intent

Section 47–1571a imposing a privilege tax on carrying on any trade or business within the District upon net income of corporations derived from sources within the District does not disclose a congressional intent to direct the use of any particular formula in calculating the tax, much less a three-factor apportionment formula based on sales, manufacturing costs and property values. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U. S. App. D. C. 292).

Under District of Columbia statute imposing a franchise tax on net income of every corporation derived from sources within the District which omitted previous provision that the assessor should apply as far as practicable the interpretations of the federal income tax law, failure to re-enact such provision or one similar to it indicated congressional intent not to direct that commissioners base their regulations on those promulgated under the federal statute, particularly in view of existing District regulations which were not repudiated. *Id.*

Federal regulations

Under this title imposing a franchise tax on net income of every corporation derived from sources within the District, District commissioners in establishing a formula for determination of the tax are not bound by the regulations issued under the comparable provision of the Federal income tax law. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U. S. App. D. C. 292).

Income derived from sources within District

Where finding of District of Columbia Tax Court that interest received by resident realty corporation on note which was given by nonresidents who purchased realty within District and which was secured by deed of trust on such realty was income from sources without District and not subject to District of Columbia franchise tax was not supported by consideration of whether the interest represented income fairly attributable to any trade or business

carried on within District, finding was improper in view of statute providing for franchise tax on income derived from sources within District, defined *inter alia* as income fairly attributable to any trade or business carried on within District. *District of Columbia* v. *Virginia Hotel Co.* (1953, 204 F. 2d 390, 92 App. D. C. 186).

§ 47–1571a. Imposition and rate of tax.

For the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District, there is hereby levied for each taxable year a tax at the rate of 5 per centum upon the taxable income of every corporation, whether domestic or foreign (except those expressly exempt under section 47–1554). (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, title VII, § 2.)

NOTES TO DECISIONS

Apportionment

Metnod of assessor of District of Columbia in determining franchise tax on railway by treating as District costs a substantial part of total management, legal, accounting and administrative costs, as well as certain terminal expenses, incurred for benefit of entire rail system or other parts of it was inequitable. *District of Columbia* v. *Southern Railway Co.* (1960, 277 F. 2d 84, 107 U.S. App. D.C. 285).

Under this section imposing for privilege of carrying on a trade or business within the District a franchise tax at five per cent upon the net income of every corporation derived from sources within the District and statutes respecting determination of the tax, the District commissioners are not required to give weight to any particular factors in prescribing a formula to determine the portion of net income fairly attributable to business carried on within the District and hence a regulation which relied on sales as a determining factor was not invalid where the regulation would inevitably apportion the net income on the basis of sales between the District and other taxing jurisdictions where the sales were made. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U.S. App. D.C. 292).

Where petitioner, which was engaged in business of buying and selling waste paper in District of Columbia and Chicago, did not prepare its return on basis of a separate accounting, return, which purported to show no net income on district business could not be said to reflect absence of net income fairly attributable to that business, and computation of petitioner's franchise tax was not required to be made on basis of separate accounting and could be made by apportioning to district that portion of income which percentage of district sales bore to total sales. *Thomas Paper Stock Co.* v. *District* of Columbia (1958, 255 F. 2d 180, 103 U. S. App. D. C. 102).

Where taxpayer's laundry plant was located in Virginia and many of its customers were located in the District of Columbia and to some of its customers it supplied its own articles which it cleaned and laundered and picked up and delivered and such work was performed outside the District, it was not "work done and services performed" in the District within the income tax statute and the charges therefor were not apportionable or allocable to the District in calculating income taxes. *Industrial Coverall Laundry Corp.* v. *District of Columbia* (1951, 188 F. 2d 669, 88 U. S. App. D. C. 266).

Where taxpayer had a laundry plant in Virginia and many of its customers were located in the District of Columbia and to some customers, taxpayer furnished a supply of its own articles each week for a consideration with pick up and delivery service and the cleaning thereof was done in the plant in Virginia, source of income from the arrangement was the use or rental of the articles with pick up and delivery incidental thereto and in addition the cleaning and laundry, the latter being service and the income fairly attributable to the use or rental of the articles should be allocated to the District, in calculating income tax. *Id.*

Congressional intent

This section imposing a privilege tax on carrying on any trade or business within the District upon net income of corporations derived from sources within the District does not disclose a congressional intent to direct the use of any particular formula in calculating the tax, much less a three-factor apportionment formula based on sales, manufacturing costs and property values. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U.S. App. D.C. 292).

This section imposing a franchise tax on net income of every corporation derived from sources within the District which omitted previous provision that the assessor should apply as far as practicable the interpretations of the federal income tax law, failure to re-enact such provision or one similar to it indicated congressional intent not to direct that commissioners base their regulations on those promulgated under the federal statute, particularly in view of existing District regulations which were not repudiated. *Id.*

Engaging in business

Where corporate officer in charge of District of Columbia office maintained by Ohio corporation reported to home office on pending legislation and Treasury Department regulations and received inquiries about sales of corporations' products in district, and salesmen from other offices of corporation solicited sales in district, and corporation shipped substantial quantities of goods to customers in district, corporation was engaged in commercial activity and was in business in district and had an office and officer in district and hence was subject to District of Columbia business privilege tax. *Owens-Illinois Glass Co.* v. *District of Columbia* (1953, 204 F. 2d 29, 92 App. D. C. 15).

Where foreign corporation entered into contracts with factors in District of Columbia to sell corporation's products for it, and factors had authority to sell products only in ordinary course of business, and agreed actively to promote sale of such products, and to sell only at prices and upon terms specified by such corporation, and to make monthly accountings to the corporation, factors were agents or representatives having offices within District, and corporation was therefore not exempt from paying District franchise tax. *Lever Bros. Co.* v. *District of Columbia* (1953, 204 F. 2d 39, 92 U. S. App. D. C. 147).

Exhausting administrative remedy

Under this section imposing a District franchise tax upon the net income of every corporation derived from sources within the District and regulations authorizing the assessor to relieve a taxpayer if the apportionment formula results in an inequitable tax, where taxpayer failed to show that it had exhausted the administrative remedy, taxpayer was not entitled to ask the court to hold that District assessments were invalid and erroneous because of improper apportionment formula. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U.S. App. D.C. 292).

Federal regulations

Under this section imposing a franchise tax on net income of every corporation derived from sources within the District, District commissioners in establishing a formula for determination of the tax are not bound by the regulations issued under the comparable provision of the Federal income tax law. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U.S. App. D.C. 292).

Regulations of Commissioners

Regulation promulgated under this section imposing franchise tax upon income of trade or business carried on in District of Columbia was not applicable to taxable years prior to its adoption. *District of Columbia* v. *Southern Railway Co.* (1960, 277 F. 2d 84, 107 U.S. App. D.C. 285).

In action by District of Columbia for review of decision of District of Columbia Tax Court holding that railway was entitled to refund of major part of franchise taxes assessed and collected from it in taxable years 1949 through 1953, evidence sustained finding that assessor did not assess taxes under regulation which controlled for years in question. *Id.*

Regulation of the District commissioners relying on sales as the determinative factor in apportioning franchise tax on corporation of part of net income of the taxpayer's business which was carried on partly within and partly without the District was not invalid as inherently arbitrary and unreasonable, or if not inherently unreasonable as invalid as applied to the taxpayer on the ground that it unreasonably apportioned to the District income which properly had no relation to the privilege of doing business in the District, where there was no showing that the formula used resulted in attributing to the taxpayer's privilege of doing business in the District a greater value than it actually had. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U.S. App. D.C. 292).

Under this title imposing a privilege tax for carrying on a business within the District, there is no implied prohibition against the use of the sales factor of the taxpayer alone in making the apportionment, and hence a regulation of the District commissioners using such factor was not invalid, especially in view of the failure of Congress to declare that part of net income fairly attributable to the District in case of a manufacturing and selling business could not properly be determined by an apportionment factor taking into account the sole factor of sales in the District as compared with total sales. *Id.*

Sales to the United States

Under Income and Franchise Tax Act of 1947, as amended, sales of tangible personal property to the United States by a corporation having its principal place of business in District of Columbia were apportionable on same basis as sales of like property to private customers, and District's contention that all of taxpayer's sales to United States were subject to tax and not apportionable was opposed to interpretation of statute and rule set out in District's own regulations. *District of Columbia* v. *Gallant Incorporated* (1962, 306 F. 2d 761, 113 U.S. App. D.C. 92).

Sources within the District

Where parent corporation's entire income consisted of dividends from three subsidiary corporations, all of which (1) were organized under District of Columbia law, (2) had their principal offices and businesses in District, and (3) were engaged in business therein, parent corporation received its income from "sources" within the District and was therefore subject to income and franchise taxes, and it was immaterial that some of business of subsidiaries was done elsewhere, since court was not concerned with sources of their income but only with sources of parent corporation's income. *Consolidated Title Corp.* v. *District of Columbia* (1960, 275 F. 2d 885, 107 U.S. App. D.C. 221).

TITLE VIII.—TAX ON UNINCORPORATED BUSINESSES

§ 47–1574. Definition of unincorporated business.

For the purposes of this subchapter (not alone of this title) and unless otherwise required by the context, the words "unincorporated business" mean any trade or business, conducted or engaged in by any individual, whether resident or nonresident, statutory or common-law trust, estate, partnership, or limited or special partnership, society, association, executor, administrator, receiver, trustee, liquidator, conservator, committee assignee, or by any other entity or fiduciary, other than a trade or business conducted or engaged in by any corporation; and include any trade or business which if conducted or engaged in by a corporation would be taxable under sections 47–1571 and 47–1571a. The words "unincorporated business" do not include any trade or business which by law, customs, or ethics cannot be incorporated or any trade or business in which more than 80 per centum of the gross income is derived from the personal services actually rendered by the individual or members of the partnership or other entity in the conducting or carrying on of any trade or business and in which capital is not a material income-producing factor. (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, title VIII, § 1.)

NOTES TO DECISIONS

Business or commercial activity

Petitioner who purchased second-trust notes at discount, investigated credit of makers and inspected security to ascertain that value justified loan, made his own collections, maintained records of payments and followed up delinquent debtors by telephone or letter, was not engaged in investment of funds in securities but was engaged in "business or commercial activity" within this section imposing tax upon income of unincorporated businesses for privilege of carrying on or engaging in any trade or business. *Stone* v. *District of Columbia* (1952, 198 F. 2d 601, 91 U. S. App. D. C. 140).

Engaging in business

Where physician devoted all his time to practice of his profession and relied upon his real estate adviser for purchase or making of first trust notes or purchase of real estate, collections were made by bank, and physician did not follow up delinquent accounts, and had no employees or office connected with his investments, physician was not engaged in "business" of lending within District of Columbia Code imposing tax on privilege of engaging in any business within District. *District of Columbia* v. *J. C. Brady* (1960, 288 F. 2d 108, 109 U.S. App. D.C. 324).

In action by taxpayer against District of Columbia for recovery of franchise taxes paid on basis that he had been engaged in business of renting real estate, wherein evidence as to whether taxpayer, a practicing physician, had wholly parted with management and control of three of his properties that were rented was not conclusive, and trial court made no finding on such issue, case would be remanded for further consideration of that phase. *Id.*

Neither ownership per se nor even leasing of property by owner necessarily constitutes carrying on business of renting real estate within District of Columbia franchise tax imposed on businesses. *Id.*

Engineering services

Where total salaries paid to engineering employees, "free lance" draftsmen, and independent engineering firms ranged between 55 percent and 40 percent of gross income of sole proprietor of business engaged in certain branch of field of civil engineering, proprietor was not entitled to exemption from District of Columbia franchise tax on ground that more than 80 percent of gross income had been derived from personal services actually rendered by proprietor. *District of Columbia* v. *Ghent* (1955, 220 F. 2d 210, 95 U. S. App. D. C. 103).

Evidence

Evidence was sufficient to warrant finding of District of Columbia Board of Tax Appeals that more than 80 percent of gross income was derived from a partner's own personal service, so as to bring partnership within this section excluding from franchise tax on unincorporated business a partnership in which more than 80 percent of gross income is derived from personal services actually rendered by partners. *District of Columbia* v. *Adair* (1952, 196 F. 2d 603, 90 U. S. App. D. C. 368).

Income from capital

Under this title levying a tax upon income of unincorporated businesses if less than 80 percent of gross income was derived from personal services of members of business and its capital was not a material income-producing factor, the statutory exemption with respect to income from capital did not require that capital not be used in the business but only that it not be a material income-producing factor. *Rohrbaugh & Co.* v. *District of Columbia* (1955, 225 F. 2d 264, 96 U. S. App. D. C. 207).

Under this section levying tax upon income of unincorporated business if less than 80 percent of gross income was derived from personal services of members of business and if capital was not a material income-producing factor, dividends and profits derived by brokerage and securities firm from trading securities registered in firm

name constituted material income produced by the firm's capital. *Id.*

Insurance agency

Partnership conducting an insurance agency having gross commissions as its sole source of income and having numerous soliciting subagents who produced the majority of gross commissions, was not entitled to exemption from franchise tax under this section exempting partnership from franchise tax where more than 80% of the gross income is derived from personal services actually rendered by partners thereof. *District of Columbia* v. *Jones and Jones* (1959, 270 F. 2d 939, 106 U.S. App. D.C. 187).

Nature of tax

Unincorporated business franchise tax imposed by District of Columbia was not an "income tax" on portion of net income derived by a resident of Maryland from operation of unincorporated partnership business in District of Columbia within section 47–1567d allowing a credit against Maryland income tax for income tax paid to another state, though franchise tax was imposed upon taxable income of business and residents of District were allowed credit against individual income taxes for franchise tax paid. *Gardella et ux.* v. *Comptroller of the State of Maryland* (Ct. of App. Md. 1957, 130 A. 2d 752).

Personal services by partners

Under this section which excludes a partnership from franchise tax imposed upon unincorporated business in which more than 80 percent of the gross income is derived from the personal services actually rendered by the individual members of the partnership, percentage of gross income paid to salaried employees does not control in determining what services are the basis of the income. *District of Columbia* v. *Adair* (1952, 196 F. 2d 603, 90 U.S. App. D.C. 368).

Power of Tax Court

In franchise tax case, District of Columbia Tax Court could, upon consideration of record as a whole, properly conclude, from nature of acts of individuals and their conduct in relation to property which they had acquired and held as tenants in common, that gain from its sale had been received by them, as individuals, and not by an unincorporated business. *District of Columbia* v. *Ben Lar Associates et al.* (1958, 261 F. 2d 376, 104 U.S. App. D.C. 258).

The District of Columbia Tax Court has authority to uphold imposition of correct tax, upon right taxpayer, in correct entity, where only error found by that court is in capacity in which taxpayer is described. *Arthur Jordan Foundation* v. *District of Columbia* (1955, 219 F. 2d 503, 95 U. S. App. D. C. 71).

Stock brokerage business

Under this section levying a tax upon income of unincorporated business if less than 80 percent of gross income was derived from personal services of members of business and its capital was not a material income-producing factor, income derived by taxpayers, who conducted a brokerage and securities business, from underwriting a portion of an issue of new shares of stock by selling shares at higher market price to customers than price to taxpayers as underwriters, was a profit from purchase and sales of securities by an underwriter and not a commission paid for personal services rendered to customers. *Rohrbaugh & Co.* v. *District of Columbia* (1955, 225 F. 2d 264, 96 U. S. App. D. C. 207).

Under this section levying a tax upon income of unincorporated business if less than 80 percent of gross income was derived from personal services of members of business and its capital was not a material income-producing factor, income from sale of unlisted securities, purchased by taxpayers from a dealer at a discount constituted a profit on a purchase and sale as a merchant and not a commission for services as an agent in buying securities for customers. *Id.*

Stock brokerage is little different from any business whose activities are essentially those of agents for purchase and sale and such business would find neither the general corporation statute of the District, specific statutes, nor a body of case law erecting a barrier against incorporation, and consequently, it is not exempt from an unincorporated business tax. *Hendrick* v. *District of Columbia* (1950, 183 F. 2d 1002, 87 U.S. App. D.C. 265).

Trust

Where Tax Assessor levied franchise tax on trust doing business within area, on basis that such trust was corporation, and where, on appeal from such determination, District of Columbia Tax Court decided that trust was not so taxable as corporation, but rather that it was taxable as an unincorporated business, Tax Court decision was not subject to objection that, after having held trust not taxable as corporation, it had no power to impose different tax in lieu of one appealed. *Arthur Jordan Foundation* v. *District of Columbia* (1955, 219 F. 2d 503, 95 U. S. App. D. C. 71).

§ 47–1574a. Taxable income defined.

For the purposes of this title, and unless otherwise required by the context, the words "taxable income" mean the amount of net income derived from sources within the District within the meaning of sections 47–1580 to 47–1580b in excess of the exemption granted by section 47–1574c. (July 16, 1947, 61 Stat. 346, Art. I, title VIII, § 2.)

§ 47–1574b. Imposition and rate of tax.

For the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District, there is hereby levied for each taxable year a tax at the rate of 5 per centum upon the taxable income of every unincorporated business, whether domestic or foreign (except those expressly exempt under section 47–1554). (July 16, 1947, 61 Stat. 346, Art. I, title VIII, § 3.)

§ 47–1574c. Exemption.

Before computing the tax upon the taxable income of an unincorporated business, there shall be deducted therefrom an exemption of $5,000, except that where the period covered by a return is less than a year, or where a return shows that an unincorporated business has been carried on for less than twelve months, such exemption shall be prorated on a daily basis: *Provided, however,* That any amount exempted under this section from the tax imposed by section 47–1574b shall be reported and included in the gross income of that person or those persons entitled to a share therein in proportion to the share to which each person is entitled, and shall be reported in the return of each of such persons for his taxable year in which is ended the taxable year of the unincorporated business. (July 16, 1947, 61 Stat. 346, Art. I, title VIII, § 4; May 27, 1949, 63 Stat. 132, ch. 146, title IV, § 416.)

AMENDMENT

1949—Act May 27, 1949, substituted "$5,000" for "$10,000."

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act May 27, 1949, applicable to taxable years or portions thereof beginning after Dec. 31, 1948, see section 421 of act May 27, 1949, set out as a note under § 47–1551c.

§ 47–1574d. By whom payable.

The taxes imposed by section 47–1574b shall be payable by the person or persons, jointly and severally, conducting the unincorporated business. The taxes imposed under this title may be assessed in the name of the unincorporated business or in the name or names of the person or persons liable for the payment of such taxes, or both. (July 16, 1947, 61 Stat. 346, ch. 258, Art. I, title VIII, § 5.)

§ 47–1574e. Partners only taxable.

Individuals carrying on any trade or business in partnership in the District, other than an unincorporated business, shall be liable for income tax only in their individual capacities. The tax on all such income shall be assessed against the individual partners under sections 47–1567 to 47–1567d. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year; or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the partnership for any accounting period of the partnership ending within the taxable year upon the basis of which the partner's net income is computed. (July 16, 1947, 61 Stat. 316, ch. 258, Art. I, title VIII, § 6.)

Title IX.—Tax on Estates and Trusts

§ 47–1577. Resident and nonresident estates and trusts defined.

For the purposes of this title, estates and trusts are (a) resident estates or trusts, or (b) nonresident estates or trusts. If the decedent was at the time of his death domiciled within the District, his estate is a resident estate, and any trust created by his will is a resident trust. If the decedent was not at the time of his death domiciled within the District, his estate is a nonresident estate, and any trust created by his will is a nonresident trust. If the creator of a trust was at the time the trust was created domiciled within the District, or if the trust consists of property of a person domiciled within the District, the trust is a resident trust. If the creator of the trust was not at the time the trust was created domiciled within the District, the trust is a nonresident trust. If the trust resulted from the dissolution of a corporation organized under the laws of the District of Columbia the trust is a resident trust. If the trust resulted from the dissolution of a foreign corporation, the trust is a nonresident trust. (July 16, 1947, 61 Stat. 346, ch. 258, Art. I, title IX, § 1.)

§ 47–1577a. Residence or situs of fiduciary not to control.

The residence or situs of the fiduciary shall not control the classification of estates and trusts as resident or nonresident under the provisions of section 47–1577. (July 16, 1947, 61 Stat. 347, ch. 258, Art. I, title IX, § 2.)

§ 47–1577b. Imposition of tax.

The taxes imposed by sections 47–1567 to 47–1567d upon residents shall apply to the income of resident estates, and income from any kind of property held in resident trusts, including—

(a) income accumulated in trust for the benefit of unborn or unascertained person or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(b) income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of any infant or incompetent person which is to be held or distributed as the court may direct;

(c) income received by estates of deceased persons during the period of administration or settlement of the estate; and

(d) income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated. (July 16, 1947, 61 Stat. 347, ch. 258, Art. I, title IX, § 3.)

§ 47–1577c. Computation of the tax.

The tax shall be computed upon the taxable net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 47–1577f (relating to revocable trusts) and section 47–1577g (relating to income for benefit of the grantor). (July 16, 1947, 61 Stat. 347, ch. 258, Art. I, title IX, § 4.)

§ 47–1577d. Net income.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except as to the personal exemptions and credits for dependents, and except that—

(a) there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (b) of this section in the same or any succeeding taxable year;

(b) in the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary;

(c) there shall be allowed as a deduction (in lieu of the deductions for charitable contributions authorized by section 47–1557b (a) (8)) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating a trust, is during the taxable year paid or permanently set aside for the purposes and in the manner provided in section 47–1557b (a) (8), or is to be used exclusively for the purposes enumerated in section 47–1557b (a) (8);

(d) there shall be allowed to an estate the same exemption as is allowed residents under the provisions of section 47–1567a (a);

(e) there shall be allowed to a trust a credit against net income of $100. (July 16, 1947, 61 Stat. 347, ch. 258, Art. I, title IX, § 5; May 27, 1949, 63 Stat. 132, ch. 146, title IV, § 415.)

AMENDMENT

1949—Subsecs. (d) and (e) added by act May 27, 1949.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act May 27, 1949, applicable to taxable years or portions thereof beginning after Dec. 31, 1948, see section 421 of act May 27, 1949, set out as a note under § 47–1551c.

§ 47–1577e. Different taxable year.

If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under section 47–1577d (a), to include in computing his net income, shall be based upon the income of the estate or trust for any taxable year of the estate or trust ending within his taxable year. (July 16, 1947, 61 Stat. 348, ch. 258, Art. I, title IX, § 6.)

§ 47–1577f. Revocable trusts.

The income of a trust shall be included in computing the net income of the grantor of such trust where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

(a) in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom; or

(b) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom. (July 16, 1947, 61 Stat. 348, ch. 258, Art. I, title IX, § 7.)

§ 47–1577g. Income for benefit of grantor.

So much of the income of any trust shall be included in computing the net income of the grantor as—

(a) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(b) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

(c) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in section 47–1557b (a) (8), relating to the so-called "charitable contribution" deduction). (July 16, 1947, 61 Stat. 348, ch. 258, Art. I, title IX, § 8.)

§ 47–1577h. Definition of "in discretion of grantor".

As used in this title, the term "in the discretion of the grantor" means in the discretion of the grantor either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question. (July 16, 1947, 61 Stat. 348, ch. 258, Art. I, title IX, § 9.)

§ 47–1577i. Employees' trusts.

(a) Exemption from tax.—A trust forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall not be taxable under this subchapter and no other provision of this subchapter shall apply with respect to such trust or to its beneficiary, except as hereinafter in this section expressly provided, if such trust meets the requirements for exemption from Federal income tax under section 165 of the Federal Internal Revenue Code.

(b) Taxability of beneficiary.—The amount actually distributed or made available to any distributee by any such trust shall be taxable to him, in the year in which so distributed or made available, under section 47–1557a (b) (2) as if it were an annuity the consideration for which is the amount contributed by the employee.

(c) Treatment of beneficiary of trust not exempt under subsection (a).—Contribution to a trust made by an employer during a taxable year of the employer which ends within or with a taxable year of the trust for which the trust is not exempt under subsection (a) of this section shall be included in the gross income of an employee for the taxable year in which the contribution is made to the trust in the case of an employee whose beneficial interest in such contribution is nonforfeitable at the time the contribution is made. (July 16, 1947, 61 Stat. 348, ch. 258, Art. I, title IX, § 10.)

REFERENCES IN TEXT

Section 165 of the Federal Internal Revenue Code, referred to in subsec. (a) refers to section 165 of the Internal Revenue Code of 1939, and is now covered by sections 401, 402 and 501(a) of the Internal Revenue Code of 1954. See 26 U.S.C. §§ 401, 402, 501(a).

TITLE X.—PURPOSE OF SUBCHAPTER AND ALLOCATION AND APPORTIONMENT

§ 47–1580. Purpose of subchapter.

It is the purpose of this subchapter to impose (1) an income tax upon the entire net income of every resident and every resident estate and trust, and (2) a franchise tax upon every corporation and unincorporated business for the privilege of carrying on or engaging in any trade or business within the District and of receiving such other income as is derived from sources within the District: *Provided, however,* That, in the case of any corporation, the amount received as dividends from a corporation which is subject to taxation under this subchapter, and, in the case of a corporation not engaged in carrying on any trade or business within the District, interest received by it from a corporaton which is subject to taxation under this subchapter shall not be considered as income from sources within the District for the purposes of this subchapter. The measure of the franchise tax shall be that portion of the net income of the corporation and unincorporated business as is fairly attributable to any trade or business carried on or engaged in within the District and such other net income as is derived from sources within the District; *Provided further,* That income derived from the sale of tangible personal property by a corporation or unincorporated business not carrying

on or engaging in trade or business within the District as defined in sections 47–1551 to 47–1551c shall not be considered as income from sources within the District for purposes of this subchapter, with the exception of income from sale to the United States not excluded from gross income as provided in section 47–1557a (b) (13). (July 16, 1947, 61 Stat. 349, ch. 258, Art. I, title X, § 1; May 3, 1948, 62 Stat. 207, ch. 246, § 2.)

AMENDMENT

1948—Act May 3, 1948, added the second proviso.

EFFECTIVE DATE OF 1948 AMENDMENT

Amendent of section by act May 3, 1948, applicable to the taxable year or part thereof beginning on Jan. 1, 1948, and to succeeding taxable years, see section 5 of act May 3, 1948, set out as a note under § 47–1551c.

NOTES TO DECISIONS

Apportionment

Section 47–1571 et seq. imposing franchise tax on that portion of corporation's net income as is fairly attributable to any trade or business carried on or engaged in within the District and such other net income as is derived from sources within the District envisions a situation where the revenue of a corporation comes from such varied and diverse sources that it can be separated into more than one stream. *District of Columbia* v. *Evening Star Newspaper Co.* (1959, 273 F. 2d 95, 106 U.S. App. D.C. 360).

Where section 47–1571 et seq. imposes franchise tax on that portion of corporation's net income as is fairly attributable to any trade or business carried on or engaged in within the District and such other net income as is derived from sources within the District and a District newspaper had revenue (1) from sale of its newspapers both within and without the District and (2) from sale of advertising space and (3) in nature of interest on obligations, rents and dividends and this rent, etc., was from District sources, the newspaper's tax would be calculated on the sum of the two separate "net incomes"; i.e., (1) net income from non-operating activities (rentals, etc.) which were from sources within the District and which was specifically allocated to the District, and (2) that portion of operating net income from the trade or business which is fairly attributable to business carried on within the District. *Id.*

Where section 47–1571 et seq. imposes franchise tax on that portion of corporation's net income as is fairly attributable to any trade or business carried on or engaged in within the District and such other net income as is derived from sources with the District and the commissioners' regulations promulgated thereunder envision a procedure whereby certain income will be specifically allotted to District sources, i.e., rents, royalties, income from sale of realty, etc., and other income from various activities both within and without the District will be apportioned depending upon the source or activity which produced it, with the assessor being given broad authority with respect to the apportionment, such regulations are applicable to a newspaper which engages in multiple activities both within and without the District. *Id.*

Where petitioner, which was engaged in business of buying and selling waste paper in District of Columbia and Chicago, did not prepare its return on basis of a separate accounting, return, which purported to show no net income on district business could not be said to reflect absence of net income fairly attributable to that business, and computation of petitioner's franchise tax was not required to be made on basis of separate accounting and could be made by apportioning to district that portion of income which percentage of district sales bore to total sales. *Thomas Paper Stock Co.* v. *District of Columbia* (1958, 255 F. 2d 180, 13 U. S. App. D. C. 102).

Assessment

Where original formula for taxation worked out by agreement between assessor and newspaper doing business both within and without the District of Columbia did not follow any applicable regulation promulgated by the commissioners under this subchapter, such formula was erroneous. *District of Columbia* v. *Evening Star Newspaper Co.* (1959, 273 F. 2d 95, 106 U.S. App. D.C. 360).

Where deficiency assessments levied by assessor against District of Columbia newspaper doing business both within and without the District were based on the false premise that all the newspaper's income was from sources solely within the District, the assessments were invalid and were refundable. *Id.*

Where corporation protesting assessment of District of Columbia business privilege tax also raised before Board of Tax Appeals for District of Columbia the question of amount of assessment, and on review it was decided that corporation was subject to the tax, the case would be remanded to District of Columbia Tax Court as successor to the Board for consideration of question of amount of assessment. *Owens-Illinois Glass Co.* v. *District of Columbia* (1953, 204 F. 2d 29, 92 App. D. C. 15).

Congressional intent

Section 47–1571 et seq. imposing a privilege tax on carrying on any trade or business within the District upon net income of corporations derived from sources within the District does not disclose a congressional intent to direct the use of any particular formula in calculating the tax, much less a three-factor apportionment formula based on sales, manufacturing costs and property values. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U. S. App. D. C. 292).

Under section 47–1571 et seq. imposing a franchise tax on net income of every corporation derived from sources within the District which omitted previous provision that the assessor should apply as far as practicable the interpretations of the federal income tax law, failure to re-enact such provision or one similar to it indicated congressional intent not to direct that commissioners base their regulations on those promulgated under the federal statute, particularly in view of existing District regulations which were not repudiated. *Id.*

Engaging in business

A District of Columbia newspaper's net income was derived from sources both within and without the District, for District franchise tax purposes, where substantial number of newspapers was sold outside District. *District of Columbia* v. *Evening Star Newspaper Co.* (1959, 273 F. 2d 95, 106 U.S. App. D. C. 360).

In determining whether taxpayer is carrying on a trade or business solely within District of Columbia for District franchise tax purposes, passage of title is useful as a gauge but is not solely determinative of source of income. *Id.*

As respects whether taxpayer is carrying on a trade or business solely within District of Columbia for District franchise tax purposes, the fact that taxpayer's activities in Maryland and Virginia are not sufficient to subject it to service of process in those states is not the determinative test. *Id.*

That no other jurisdiction has seen fit to tax taxpayer as doing business therein is not persuasive that the taxpayer's business is solely within the District of Columbia for District franchise tax purposes. *Id.*

Where corporate officer in charge of District of Columbia office maintained by Ohio corporation reported to home office on pending legislation and Treasury Department regulations and received inquiries about sales of corporation's products in District, and salesmen from other offices of corporation solicited sales in District, and corporation shipped substantial quantities of goods to customers in District, corporation was engaged in commercial activity and was in business in District and had an office and officer in District and hence was subject to District of Columbia business privilege tax. *Owens-Illinois Glass Co.* v. *District of Columbia* (1953, 204 F. 2d 29, 92 App. D. C. 15).

Exhausting administrative remedy

Under section 47–1571 et seq. imposing a District franchise tax upon the net income of every corporation derived from sources within the District and regulations authorizing the assessor to relieve a taxpayer if the apportionment formula results in an inequitable tax, where taxpayer failed to show that it had exhausted the administrative remedy, taxpayer was not entitled to ask

the court to hold that District assessments were invalid and erroneous because of improper apportionment formula. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U.S. App. D. C. 292).

Federal regulations

In determining whether gain from sale of business was any income derived from sources within the District of Columbia for District income and franchise tax purposes, criteria used to determine under the Internal Revenue Act whether income was from sources within the United States should be applied. *District of Columbia* v. *ACF Industries, Inc.* (1965, 350 F. 2d 795, 122 U.S. App. D.C. 12).

Under section 47–1571 et seq. imposing a franchise tax on net income of every corporation derived from sources within the District, District commissioners in establishing a formula for determination of the tax are not bound by the regulations issued under the comparable provision of the federal income tax law. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U.S. App. D.C. 292).

Findings

Where finding of District of Columbia Tax Court that interest received by resident realty corporation on note which was given by nonresidents who purchased realty within District and which was secured by deed of trust on such realty was income from sources without District and not subject to District of Columbia franchise tax was not supported by consideration of whether the interest represented income fairly attributable to any trade or business carried on within District, finding was improper in view of section 47–1571 providing for franchise tax on income derived from sources within District, defined *inter alia* as income fairly attributable to any trade or business carried on within District. *District of Columbia* v. *Virginia Hotel Co.* (1953, 204 F. 2d 390, 92 App. D. C. 186).

Measure of tax

Under section 47–1571 et seq. imposing a tax on net income from District of Columbia sources of foreign and domestic corporations for privilege of carrying on or engaging in trade or business within District and of receiving income from sources within District, and containing provisos, measure of tax is not limited to sale in which title passes in District. *Lever Bros. Co.* v. *District of Columbia* (1953, 204 F. 2d 39, 92 App. D. C. 147).

Nonoperating net income

Rents and royalties from nonoperating activities were from District of Columbia sources and should be specifically allocated to the District in computing District franchise tax on newspaper which engaged in activities both within and without the District, and this net income should be calculated by subtracting from the gross income attributable to these sources the expenses incurred in the receipt and this net income figure would be "nonoperating net income". *District of Columbia* v. *Evening Star Newspaper Co.* (1959, 273 F. 2d 95, 106 U.S. App. D.C. 360).

Operating net income

The circulation and advertising revenue of District of Columbia newspaper which engaged in activities both within and without the District would not be separated for apportionment purposes, as respects District of Columbia franchise tax, and both were operating revenues, and "operating net income" from advertising and circulation must be apportioned between District and non-District sources. *District of Columbia* v. *Evening Star Newspaper Co.* (1959, 273 F. 2d 95, 106 U.S. App. D.C. 360).

Power of tax court

The District of Columbia Tax Court has authority to uphold imposition of correct tax, upon right taxpayer, in correct entity, where only error found by that court is in capacity in which taxpayer is described. *Arthur Jordan Foundation* v. *District of Columbia* (1955, 219 F. 2d 503, 95 U. S. App. D. C. 71).

Regulations of Commissioners

The 1961 amendments of District of Columbia franchise tax regulations were not retroactively applicable to determine tax liability for 1956 and hence a formula using only a sales factor must be employed under 1953 regulation so that sales principally secured, negotiated or effected in District were to be deemed District sales in determining proper method of apportioning to District that part of taxpayer's net income which was "fairly attributable" to business carried on in the District. *District of Columbia* v. *Gallant Incorporated* (1962, 305 F. 2d 761, 113 U.S. App. D.C. 92).

District of Columbia franchise tax regulations which provided that prior regulations were rescinded except for certain purposes in relation to years to which they were applicable were only regulations in effect as to tax year subsequent to promulgation of such regulations. *District of Columbia* v. *Gallant Incorporated; Gallant Incorporated* v. *District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

Under section 47–1571a imposing for privilege of carrying on a trade or business within the District a franchise tax at five percent upon the net income of every corporation derived from sources within the District and statutes respecting determination of the tax, the District commissioners are not required to give weight to any particular factors in prescribing a formula to determine the portion of net income fairly attributable to business carried on within the District and hence a regulation which relied on sales as a determining factor was not invalid where the regulation would inevitably apportion the net income on the basis of sales between the District and other taxing jurisdictions where the sales were made. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U.S. App. D.C. 292).

Under section 47–1571 et seq., imposing a privilege tax for carrying on a business within the District, there is no implied prohibition against the use of the sales factor of the taxpayer alone in making the apportionment, and hence a regulation of the District commissioners using such factor was not invalid, especially in view of the failure of Congress to declare that part of net income fairly attributable to the District in case of a manufacturing and selling business could not properly be determined by an apportionment factor taking into account the sole factor of sales in the District as compared with total sales. *Id.*

Regulation of the District commissioners relying on sales as the determinative factor in apportioning franchise tax on corporation of part of net income of the taxpayer's business which was carried on partly within and partly without the District was not invalid as inherently arbitrary and unreasonable, or if not inherently unreasonable as invalid as applied to the taxpayer on the ground that it unreasonably apportioned to the District income which properly had no relation to the privilege of doing business in the District, where there was no showing that the formula used resulted in attributing to the taxpayer's privilege of doing business in the District a greater value than it actually had. *Id.*

Apportionment formula, contained in 1948 regulations prescribed by Commissioners of District of Columbia to govern computation of franchise tax, was valid. *District of Columbia* v. *Radio Corporation of America* (1956, 232 F. 2d 376, 98 U. S. App. D. C. 119, certiorari denied 77 S. Ct. 44, 352 U. S. 845, 1 L. Ed. 2d 51).

1953 amendment to regulations, prescribed by Commissioners of District of Columbia to govern computation of franchise taxes, did not operate retroactively, and corporation's franchise tax liability for years 1949, 1950 and 1951 should have been determined under regulations then in force. *Id.*

Regulation prescribed by District commissioners, allocating to district gross income from sale principally secured, negotiated, or effected by owners, employees, agents, officers and branches of corporation located in District regardless of place of passage of title, was valid under section 47–1571 et seq. imposing a tax on net income from District of Columbia sources of foreign and domestic corporations for privilege of carrying on or engaging in trade or business within District and of receiving income from sources within District. *Lever Bros. Co.* v. *District of Columbia* (1953, 204 F. 2d 39, 92 App. D. C. 147).

Taxable income

Where parent corporation's entire income consisted of dividends from three subsidiary corporations, all of which (1) were organized under District of Columbia law, (2) had their principal offices and businesses in District, and (3) were engaged in business therein, parent corporation received its income from "sources" within the District and was therefore subject to income and franchise taxes, and it was immaterial that some of business of subsidiaries was done elsewhere, since court was not concerned with sources of their income but only with sources of parent corporation's income. *Consolidated Title Corp* v. *Dist. of Columbia* (1960, 275 F. 2d 885, 107 U.S. App. D.C. 221).

Where taxpayer's laundry plant was located in Virginia and many of its customers were located in the District of Columbia and to some of its customers it supplied its own articles which it cleaned and laundered and picked up and delivered and such work was performed outside the District, it was not "work done and services performed" in the District within section 47–1571 et seq. and the charges therefor were not apportionable or allocable to the District in calculating income taxes. *Industrial Coverall Laundry Corp.* v. *District of Columbia* (1951, 188 F. 2d 669, 88 U. S. App. D. C. 266).

Where taxpayer had a laundry plant in Virginia and many of its customers were located in the District of Columbia and to some customers, taxpayer furnished a supply of its own articles each week for a consideration with pick up and delivery service and the cleaning thereof was done in the plant in Virginia, source of income from the arrangement was the use or rental of the articles with pick up and delivery incidental thereto and in addition the cleaning and laundry, the latter being service and the income fairly attributable to the use or rental of the articles should be allocated to the District, in calculating income tax. *Id.*

§ 47–1580a. Allocation and apportionment.

The entire net income of any corporation or unincorporated business, derived from any trade or business carried on or engaged in wholly within the District shall, for the purposes of this subchapter, be deemed to be from sources within the District, and shall, along with other income from sources within the District, be allocated to the District. If the trade or business of any corporation or unincorporated business is carried on or engaged in both within and without the District, the net income derived therefrom shall, for the purposes of this subchapter, be deemed to be income from sources within and without the District. Where the net income of a corporation or unincorporated business is derived from sources both within and without the District, the portion thereof subject to tax under this subchapter shall be determined under regulation or regulations prescribed by the Commissioners. The Assessor is authorized to employ any formula or fomulas provided in any regulation or regulations prescribed by the Commissioners under this subchapter which, in his opinion, should be applied in order to properly determine the net income of any corporation or unincorporated business subject to tax under this subchapter. (July 16, 1947, 61 Stat. 349, ch. 258, Art. I, title X, § 2.)

NOTES TO DECISIONS

Apportionment

Section 47–1571 et seq. imposing franchise tax on that portion of corporation's net income as is fairly attributable to any trade or business carried on or engaged in within the District and such other net income as is derived from sources within the District envisions a situation where the revenue of a corporation comes from such varied and diverse sources that it can be separated into more than one stream. *District of Columbia* v. *Evening Star Newspaper Co.* (1959, 273 F. 2d 95, 106 U.S. App. D.C. 360).

Where District of Columbia statutes impose franchise tax on that portion of corporation's net income as is fairly attributable to any trade or business carried on or engaged in within the District and such other net income as is derived from sources within the District and a District newspaper had revenue (1) from sale of its newspapers both within and without the District and (2) from sale of advertising space and (3) in nature of interest on obligations, rents and dividends and this rent, etc., was from District sources, the newspaper's tax would be calculated on the sum of the two separate "net incomes"; i.e., (1) net income from non-operating activities (rentals, etc.) which were from sources within the District and which was specifically allocated to the District, and (2) that portion of operating net income from the trade or business which is fairly attributable to business carried on within the District. *Id.*

Where District of Columbia statutes impose franchise tax on that portion of corporation's net income as is fairly attributable to any trade or business carried on or engaged in within the District and such other net income as is derived from sources within the District and the commissioners' regulations promulgated thereunder envision a procedure whereby certain income will be specifically allotted to District sources, i.e., rents, royalties, income from sale of realty, etc., and other income from various activities both within and without the District will be apportioned depending upon the source or activity which produced it, with the assessor being given broad authority with respect to the apportionment, such regulations are applicable to a newspaper which engages in multiple activities both within and without the District. *Id.*

Where petitioner, which was engaged in business of buying and selling waste paper in District of Columbia and Chicago, did not prepare its return on basis of a separate accounting, return, which purported to show no net income on district business could not be said to reflect absence of net income fairly attributable to that business, and computation of petitioner's franchise tax was not required to be made on basis of separate accounting and could be made by apportioning to district that portion of income which percentage of district sales bore to total sales. *Thomas Paper Stock Co.* v. *District of Columbia* (1958, 255 F. 2d 180, 103 U. S. App. D. C. 102).

Where taxpayer's laundry plant was located in Virginia and many of its customers were located in the District of Columbia and to some of its customers it supplied its own articles which it cleaned and laundered and picked up and delivered and such work was performed outside the District, it was not "work done and services performed" in the District within the income tax statute and the charges therefor were not apportionable or allocable to the District in calculating income taxes. *Industrial Coverall Laundry Corp.* v. *District of Columbia* (1951, 188 F. 2d 669, 88 U. S. App. D. C. 266).

Apportionment formula

Courts may not substitute franchise tax formula for that adopted by District of Columbia commissioners and most that they can do is reject commissioners' approach as unauthorized. *District of Columbia* v. *General Motors Corp.* (1964, 336 F. 2d 885, 118 U.S. App. D.C. 381; reversed on other grounds, 85 S. Ct. 1156).

Use of single-factor formula for determining franchise tax upon business conducted both within and without District of Columbia was not inherently arbitrary or unreasonable. *Id.*

Formula to effect that net income of corporation arising from activities within District of Columbia and therefore subject to franchise tax was to total net income of corporation, which obtained income from business conducted both within and without District, as sales made within District were to total sales made by corporation was a permissible one. *Id.*

Sales-factor formula established by regulation providing that portion of income derived from manufacture and sale or purchase and sale of tangible personal property to be apportioned to District of Columbia should be percentage of total of such income as District sales made during taxable year bears to total sales made everywhere

during taxable year was not authorized by District's Income and Franchise Tax Act. *General Motors Corp.* v. *District of Columbia* (1965, 85 S. Ct. 1156).

Authority of District of Columbia tax commissioners to promulgate regulations for detailed apportionment of income of multi-state enterprises is limited by provision of District's Income and Franchise Tax Act requiring that net income of corporation doing business inside and outside District be deemed to arise from sources situated in like fashion. *Id.*

Allocation of portion of corporation's income derived from manufacture and sale outside District of Columbia did not relieve District tax commissioners of statutory responsibility to apportion that part of corporation's income arising from manufacture outside and sale inside District limits. *Id.*

It is not enough, under District of Columbia statute requiring that net income of corporation doing business inside and outside District be deemed to arise from sources situated in like fashion, to require apportionment of income derived from District sales only in case where taxed corporation has no sales outside District. *Id.*

Where company carries on business both inside and outside of District of Columbia with respect to income which it derives from sales made within District, provision of District's Income and Franchise Tax Act specifying that if trade or business of any corporation is carried on both within and without District income derived therefrom shall be deemed to be income from sources within and without District requires that some portion of such income be deemed to arise from sources outside District. *Id.*

Circulation test is not exclusive apportionment formula, for District of Columbia income tax purposes, as to all types of publications carried on partly within and partly outside the District. *Broadcasting Publications, Inc.* v. *District of Columbia; District of Columbia* v. *Broadcasting Publications, Inc.* (1963, 313 F. 2d 554, 114 U.S. App. D.C. 163).

Entire income of trade magazine printed and published in District of Columbia by taxpayer whose subscribers and advertisers were almost entirely outside the District, was subject to tax in District, where greater part of total business activity, including mailing of magazines to subscribers, was carried on within District, and there was no continuous physical contact outside District except for news gathering and solicitation of advertisers. *Id.*

Assessor has discretion to select, from District of Columbia franchise tax regulations, most appropriate formula for apportioning that part of corporate taxpayer's net income which is fairly attributable to business carried on in District and, in absence of such formula, can devise formula which, in his judgment, subject to court review, will properly determine net income subject to tax and amount of tax. *District of Columbia* v. *Gallant Incorporated; Gallant Incorporated* v. *District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

Method of assessor of District of Columbia in determining franchise tax on railway by treating as District costs a substantial part of total management, legal, accounting and administrative costs, as well as certain terminal expenses, incurred for benefit of entire rail system or other parts of it was inequitable. *District of Columbia* v. *Southern Ry. Co.* (1960, 277 F. 2d 84, 107 U.S. App. D.C. 285).

Where original formula for taxation worked out by agreement between assessor and newspaper doing business both within and without the District of Columbia did not follow any applicable regulation promulgated by the commissioners under section 47–1571 et seq., such formula was erroneous. *District of Columbia* v. *Evening Star Newspaper Co.* (1959, 273 F. 2d 95, 106 U.S. App. D.C. 360).

Where deficiency assessments levied by assessor against District of Columbia newspaper doing business both within and without the District were based on the false premise that all the newspaper's income was from sources solely within the District, the assessments were invalid and were refundable. *Id.*

Apportionment formula, contained in 1948 regulations prescribed by Commissioners of District of Columbia to govern computation of franchise tax, was valid. *District of Columbia* v. *Radio Corporation of America* (1956, 232 F. 2d 376, 98 U. S. App. D. C. 119, certiorari denied 77 S. Ct. 44, 352 U. S. 845, 1 L. Ed. 2d 51).

Burden of proof

Taxpayer doing business both within and without District of Columbia did not sustain its burden of showing that franchise tax levied on it by District of Columbia as determined by single-factor sales formula was not reasonably attributable to business transacted in District. *District of Columbia* v. *General Motors Corp.* (1964, 336 F. 2d 885, 118 U.S. App. D.C. 381; reversed on other grounds 85 S. Ct. 1156).

Burden was on corporate taxpayer to show by specific evidence that double taxation would result from application of formula of District of Columbia for imposing franchise tax. *Id.*

Corporation which obtained income from business conducted both within and without District of Columbia failed to show that double taxation in violation of commerce clause would result from application of District's formula for franchise tax based upon single-factor sales formula. *Id.*

Congressional intent

Section 47–1571 et seq. imposing a privilege tax on carrying on any trade or business within the District upon net income of corporations derived from sources within the District does not disclose a congressional intent to direct the use of any particular formula in calculating the tax, much less a three-factor apportionment formula based on sales, manufacturing costs and property values. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U.S. App. D.C. 292).

Under section 47–1571 et seq. imposing a franchise tax on net income of every corporation derived from sources within the District which omitted previous provision that the assessor should apply as far as practicable the interpretations of the federal income tax law, failure to re-enact such provision or one similar to it indicated congressional intent not to direct that commissioners based their regulations on those promulgated under the federal statute, particularly in view of existing District regulations which were not repudiated. *Id.*

Exhausting administrative remedy

Under section 47–1571 et seq. imposing a District franchise tax upon the net income of every corporation derived from sources within the District and regulations authorizing the assessor to relieve a taxpayer if the apportionment formula results in an inequitable tax, where taxpayer failed to show that it had exhausted the administrative remedy, taxpayer was not entitled to ask the court to hold that District assessments were invalid and erroneous because of improper apportionment formula. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U.S. App. D.C. 292).

Federal regulations

Under section 47–1571 et seq. imposing a franchise tax on net income of every corporation derived from sources within the District, District commissioners in establishing a formula for determination of the tax are not bound by the regulations issued under the comparable provision of the federal income tax law. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U.S. App. D.C. 292).

Nonoperating net income

Rents and royalties from nonoperating activities were from District of Columbia sources and should be specifically allocated to the District in computing District franchise tax on newspaper which engaged in activities both within and without the District, and this net income should be calculated by subtracting from the gross income attributable to these sources the expenses incurred in their receipt and this net income figure would be "nonoperating net income". *District of Columbia* v. *Evening Star Newspaper Co.* (1959, 273 F. 2d 95, 106 U.S. App. D.C. 360).

Operating net income

The circulation and advertising revenue of District of Columbia newspaper which engaged in activities both within and without the District would not be separated

for apportionment purposes, as respects District of Columbia franchise tax, and both were operating revenues, and "operating net income" from advertising and circulation must be apportioned between District and non-District sources. *District of Columbia* v. *Evening Star Newspaper Co.* (1959, 273 F. 2d 95, 106 U.S. App. D.C. 360).

Regulations of Commissioners

Where it appeared that regulation amendments promulgated by commissioners of the District of Columbia and made applicable to any case in which liability of taxpayer had not been finally determined by final decision of court might be susceptible to different interpretation than regulations under which case had been decided by Tax Court, case would be remanded to Tax Court so that it could address itself to applicability and effect of amendments. *The May Department Stores Co.* v. *District of Columbia* (1966, 364 F. 2d 689, 124 U.S. App. D.C. 296).

Regulation promulgated under section 47–1571 et seq. imposing franchise tax upon income of trade or business carried on in District of Columbia was not applicable to taxable years prior to its adoption. *District of Columbia* v. *Southern Ry. Co.* (1960, 277 F. 2d 84, 107 U.S. App. D.C. 285).

Regulation of the District commissioners relying on sales as the determinative factor in apportioning franchise tax on corporation of part of net income of the taxpayer's business which was carried on partly within and partly without the District was not invalid as inherently arbitrary and unreasonable, or if not inherently unreasonable as invalid as applied to the taxpayer on the ground that it unreasonably apportioned to the District income which properly had no relation to the privilege of doing business in the District, where there was no showing that the formula used resulted in attributing to the taxpayer's privilege of doing business in the District a greater value than it actually had. *The Smoot Sand and Gravel Corp.* v. *District of Columbia* (1958, 261 F. 2d 758, 104 U.S. App. D.C. 292).

Under section 47–1571 et seq. imposing for privilege of carrying on a trade or business within the District a franchise tax at five per cent upon the net income of every corporation derived from sources within the District and statutes respecting determination of the tax, the District commissioners are not required to give weight to any particular factors in prescribing a formula to determine the portion of net income fairly attributable to business carried on within the District and hence a regulation which relied on sales as a determining factor was not invalid where the regulation would inevitably apportion the net income on the basis of sales between the District and other taxing jurisdictions where the sales were made. *Id.*

Under section 47–1571 et seq. imposing a privilege tax for carrying on a business within the District, there is no implied prohibition against the use of the sales factor of the taxpayer alone in making the apportionment, and hence a regulation of the District commissioners using such factor was not invalid, especially in view of the failure of Congress to declare that part of net income fairly attributable to the District in case of a manufacturing and selling business could not properly be determined by an apportionment factor taking into account the sole factor of sales in the District as compared with total sales. *Id.*

1953 amendment to regulations, prescribed by Commissioners of District of Columbia to govern computation of franchise taxes, did not operate retroactively, and corporation's franchise tax liability for years 1949, 1950, and 1951 should have been determined under regulations then in force. *District of Columbia* v. *Radio Corporation of America* (1956, 232 F. 2d 376, 98 U. S. App. D. C. 119, certiorari denied 77 S. Ct. 44, 352 U. S. 845, 1 L. Ed. 2d 51).

Sales to the United States

Under Income and Franchise Tax Act of 1947, as amended, sales of tangible personal property to the United States by a corporation having its principal place of business in District of Columbia were apportionable on same basis as sales of like property to private customers, and District's contention that all of taxpayer's sales to United States were subject to tax and not apportionable was opposed to interpretation of statute and rule set out in District's own regulations. *District of Columbia* v. *Gallant Incorporated* (1962, 305 F. 2d 761, 113 U.S. App. D.C. 92).

Sources within the District

A District of Columbia newspaper's net income was derived from sources both within and without the District, for District franchise tax purposes, where substantial number of newspapers was sold outside District. *District of Columbia* v. *Evening Star Newspaper Co.* (1959, 273 F. 2d 95, 106 U.S. App. D.C. 360).

In determining whether taxpayer is carrying on a trade or business solely within District of Columbia for District franchise tax purposes, passage of title is useful as a gauge but is not solely determinative of source of income. *Id.*

As respects whether taxpayer is carrying on a trade or business solely within District of Columbia for District franchise tax purposes, the fact that taxpayer's activities in Maryland and Virginia are not sufficient to subject it to service of process in those states is not the determinative test. *Id.*

That no other jurisdiction has seen fit to tax taxpayer as doing business therein is not persuasive that the taxpayer's business is solely within the District of Columbia for District franchise tax purposes. *Id.*

Where taxpayer had a laundry plant in Virginia and many of its customers were located in the District of Columbia and to some customers, taxpayer furnished a supply of its own articles each week for a consideration with pick up and delivery service and the cleaning thereof was done in the plant in Virginia, source of income from the arrangement was the use or rental of the articles with pick up and delivery incidental thereto and in addition the cleaning and laundry, the latter being service and the income fairly attributable to the use or rental of the articles should be allocated to the District, in calculating income tax. *Industrial Coverall Laundry Corp.* v. *District of Columbia* (1951, 188 F. 2d 669, 88 U. S. App. D. C. 266).

Tax Court's authority

Tax Court was not precluded, by lack of regulatory formula, from determining income fairly attributable to District of Columbia for franchise tax purposes but could determine such amount by applying applicable tax regulations and using formula Tax Court deemed best suited to determine such income. *District of Columbia* v. *Gallant Incorporated; Gallant Incorporated* v. *District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

§ 47–1580b. Allocation of income and deductions between organizations, etc.

In any of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the District, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Assessor is authorized to distribute, apportion, or allocate gross income or deductions between or among such organizations, trades, or businesses, whenever in his opinion such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses. The provisions of this section shall apply, but shall not be limited in application to any case of a common carrier by railroad subject to the Interstate Commerce Act and jointly owned or controlled directly or indirectly by two or more common carriers by railroad subject to said Act. (July 16, 1947, 61 Stat. 349, ch. 258, Art. I, title X, § 3.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in the text, is classified to 49 U.S.C. chs. 1, 8, 12, 13, and 19.

Title XI.—Bases

§ 47–1583. Basis for determining gain or loss.

The basis for determining the gain or loss from the sale, exchange, or other disposition of property shall be the cost of such property, except that—

(a) If the property is of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, the basis shall be the last inventory value thereof.

(b) In respect of any real or tangible property acquired after December 31, 1938, the cost thereof shall be adjusted as follows:

(1) By adding to its original cost to the taxpayer the amount of all expenditures connected therewith, including real-estate taxes upon the property, which were properly chargeable to capital account and were not deducted in any income-tax return which the taxpayer was required to file under the provisions of this subchapter or sections 47–1501 to 47–1547; but such additions as are herein provided for shall include only those expenditures made by the taxpayer between the time the property was acquired by him and the date of sale or other disposition of the property.

(2) By deducting from such cost the full loss sustained since acquisition for exhaustion, wear and tear, obsolescence, amortization, and depletion to the extent allowed or allowable (whichever amount is the greater) on such property in all returns required to be filed by the taxpayer under the provisions of this subchapter or of sections 47–1501 to 47–1547.

(3) In the case of property (including intangible personal property) acquired by gift or inheritance, where the transfer thereof to the taxpayer was subject to tax by the United States or by any jurisdiction in which the property had a taxable situs at that time, the basis of the property so acquired shall be the highest valuation then placed upon such transfer by the United States or by any authorized taxing State or Territory thereof. If such transfer of the property was not subject to the aforesaid transfer tax, the base shall be the fair market value of such property at the time acquired. For the purpose of this subsection, the time such inherited property was acquired shall be the date of death of the decedent. The basis herein provided for shall be subject to the appropriate adjustment or adjustments defined in subsection (b) of this section.

(c) If the property was acquired before January 1, 1939, the basis shall be the fair market value as of that date or, at the option of the taxpayer, the cost of such property, and in the case of real or tangible property such cost shall be diminished by exhaustion, wear and tear, obsolescence, and depletion actually sustained before such date: *Provided, however,* That the preceding valuation so determined shall be adjusted by the appropriate additions and deductions provided for in subsection (b) of this section to cover the period from January 1, 1939, to the date of sale or other disposition of the property. (July 16, 1947, 61 Stat. 350, ch. 258, Art. I, title XI, § 1.)

NOTES TO DECISIONS

Construction with other laws

Statute defining taxable income for income tax purposes has no bearing upon statute relating to imposition of real property tax upon previously exempt additional grounds of religious institution which have been sold at profit, and fact that determination of gain or loss on sale of church properties was not in accord with income tax statute could not invalidate assessment. *Simpson Memorial Methodist Ch.* v. *District of Columbia* (1952, 199 F. 2d 169, 91 U. S. App. D. C. 105).

§ 47–1583a. Gain or loss from sale or other disposition of property.

(a) **Computation of gain or loss.**—The gain or loss, as the case may be, from the sale or other disposition of property shall be the difference between (a) the amount realized from such sale or other disposition of the property and (b) the basis as defined in section 47–1583.

(b) **Amount realized.**—The amount realized from the sale or exchange of property shall be its selling price, and such price shall include cash payments received or to be received subsequently therefor, plus the sum of any mortgage and other encumbrances thereon at the time of such sale or exchange. The amount realized shall also include at its then market value any property received in part or in full settlement of the property sold or exchanged, adjusted to include the then existing encumbrances on such property received in exchange. (July 16, 1947, 61 Stat. 350, ch. 258, Art. I, title XI, § 2.)

§ 47–1583b. Exchange in reorganizations.

When in connection with the reorganization of a corporation, a taxpayer receives, in place of stock or securities owned by him, any stock or securities of the reorganized corporation, no gain or loss shall be deemed to occur from the exchange until the new stock or securities are sold or realized upon and the gain or loss is definitely ascertained, until which time the new stock or securities received shall be treated as taking the place of the stock and securities exchanged. For the purposes of this section, the word "reorganization" means (1) a statutory merger or consolidation; or (2) the acquisition by one corporation, in exchange solely for all or a part of its voting stock, of at least 80 per centum of the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of another corporation; or (3) the acquisition by one corporation, in exchange solely for all or a part of its voting stock, of substantially all the properties of another corporation, but in determining whether the exchange is solely for voting stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded; or (4) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its shareholders or both are in control of the corporation to which the assets are transferred; or (5) a recapitalization; or (6) a mere change in identity, form, or place of organization, however effected. (July 16, 1947, 61 Stat. 351, ch. 258, Art. I, title XI, § 3.)

§ 47–1583c. Basis for dividends paid in property.

Where any property other than money is paid by a corporation as a dividend, the base to the recipient thereof shall be the market value of such property at the time of its distribution by such corporation. (July 16, 1947, 61 Stat. 351, ch. 258, Art. I, title XI, § 4.)

§ 47–1583d. Exception to applicability of sections 47–1583 through 47–1583b.

The provisions of sections 47–1583 through 47–1583b shall not apply to the sale or exchange of any property defined as a capital asset by section 47–1551c (1). (July 16, 1947, 61 Stat. 351, ch. 258, Art. I, title XI, § 5.)

§ 47–1583e. Depreciation.

The bases used in determining the amount allowable as a deduction from gross income under the provisions of section 47–1557b (a) (7) shall be—

(a) where the property was acquired after December 31, 1938, by purchase, the basis shall be the cost thereof to the taxpayer;

(b) where the property was received in exchange for other property after December 31, 1938, the basis shall be the market value thereof at the time of such exchange;

(c) where the property was inherited or acquired by gift after December 31, 1938, the basis shall be that defined in subsection 47–1583 (b) (3);

(d) if the property was acquired prior to January 1, 1939, the appropriate basis set forth in subsection (a), (b), or (c) of this section shall be used: *Provided, however,* That the taxpayer may, at his option, use as the basis the market value of such property as of January 1, 1939;

(e) the taxpayer may deduct in each taxable year only such amount of depreciation as was actually sustained during that year and such annual deduction shall be based upon the useful life of the property remaining after the date used by the taxpayer in establishing the valuation: *Provided, however,* That the allowance for depreciation actually sustained during any taxable year may not be increased by any depreciation of the property which was allowable as a deduction in any earlier taxable year: *And provided further,* That any basis so established may not be changed in a subsequent taxable year, unless written approval of the Assessor has been first obtained. (July 16, 1947, 61 Stat. 351, ch. 258, Art. I, title XI, § 6.)

NOTES TO DECISIONS

Depreciation

Where taxpayer received real property in corporate dissolution in 1953, proper depreciation basis of these properties could not exceed total of taxpayer's interest in earned surplus account at time of dissolution, and where such amount had already been more than exhausted by depreciation deductions taken by taxpayer for years 1953 through 1959 no allowance for 1960 and 1961 District of Columbia income taxes would be permitted. *B. W. Oppenheimer* v. *District of Columbia* (1966, 33 F. 2d 708, 124 U.S. App. D.C. 221).

The proper basis for computing depreciation on corporate owned building allowable to taxpayer who had purchased all of the corporate stock for cash and then liquidated the same and transferred the assets to himself was a proper proportion of the cost to taxpayer which was the value of stock he turned over for the building. *C. A. Snow, et ano* v. *District of Columbia* (195, 361 F. 2d 523, 124 U.S. App. D.C. 69).

Under law of District of Columbia, distributions from corporate earnings were dividends, fully taxable, but distributions from depreciation reserves were not income subject to tax. *District of Columbia* v. *H. Goldman and Y. D. Goldman* (1963, 328 F. 2d 520, 117 U.S. App. D.C. 219).

TITLE XII.—ASSESSMENT AND COLLECTION; TIME OF PAYMENT

§ 47–1586. Duties of Assessor.

The Assessor is hereby required to administer the provisions of this subchapter. As soon as practicable after the return is filed, the Assessor shall examine it and shall determine the correct amount of tax. (July 16, 1947, 61 Stat. 352, ch. 258, Art. I, title XII, § 1.)

NOTES TO DECISIONS

Apportionment formula

Assessor has discretion to select, from District of Columbia franchise tax regulations, most appropriate formula for apportioning that part of corporate taxpayer's net income which is fairly attributable to business carried on in District and, in absence of such formula, can devise formula which, in his judgment, subject to court review, will properly determine net income subject to tax and amount of tax. *District of Columbia* v. *Gallant Incorporated; Gallant Incorporated* v. *District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

Tax Court's authority

Tax Court was not precluded, by lack of regulatory formula, from determining income fairly attributable to District of Columbia for franchise tax purposes but could determine such amount by applying applicable tax regulations and using formula Tax Court deemed best suited to determine such income. *District of Columbia* v. *Gallant Incorporated; Gallant Incorporated* v. *District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

§ 47–1586a. Statements and special returns.

Every person upon whom the duty is imposed by this subchapter to file any applications, returns, or reports or who is liable for any tax imposed by this subchapter shall keep such records, render under oath such statements, and comply with such rules and regulations as the Assessor from time to time may prescribe. Whenever the Assessor deems it necessary, he may required any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as he believes sufficient to show whether or not such person is liable to tax under this subchapter and the extend of such liability. (July 16, 1947, 61 Stat. 352, ch. 258, Art. I, title XII, § 2.)

§ 47–1586b. Examination of books and witnesses.

The Assessor, for the purpose of ascertaining the correctness of any return filed hereunder, or for the purpose of making an estimate of the taxable income of any taxpayer, is authorized to examine any books, papers, records, or memoranda of any person bearing upon the matters required to be included in the return and may summon any person to appear and produce books, records, papers, or memoranda bearing upon the matters required to be included in the return, and to give testimony or answer interrogatories under oath respecting the same, and the Assessor shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police

Department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then, and in that event, the Assessor may report that fact to the United States District Court for the District of Columbia, or one of the judges thereof, and said court or any judge thereof hereby is empowered to compel obedience to such summons to the same extent as witnesses may be compelled to obey the subpenas of that court. Any person in custody or control of any books, papers, records, or memoranda bearing upon the matters required to be included in such returns, who shall refuse to permit the examination by the Assessor or any person designated by him of any such books, papers, records, or memoranda, or who shall obstruct or hinder the Assessor or any person designated by him in the examination of any books, papers, records, or memoranda, shall upon conviction thereof be fined not more than $300. All prosecutions under this section shall be brought in the District of Columbia Court of General Sessions on information by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia. (July 16, 1947, 61 Stat. 352, ch. 258, Art. I, title XII, § 3; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", "judge" for "justice", and "judges" for "justices."

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 47–1586c. Return by Assessor.

If any person fails to make and file a return at the time prescribed by law or by regulations made under authority of law, or makes, willfully or otherwise, a false or fraudulent return, the Assessor shall make the return from his own knowledge and from such information as he can obtain through testimony or otherwise. Any return so made and subscribed by the Assessor shall be prima facie good and sufficient for all legal purposes. (July 16, 1947, 61 Stat. 352, ch. 258, Art. I, title XII, § 4.)

§ 47–1586d. Determination and assessment of deficiency.

If a deficiency in tax is determined by the Assessor, the taxpayer shall be notified thereof and given a period of not less than thirty days, after such notice is sent by registered mail or by certified mail, in which to file a protest and show cause or reason why the deficiency should not be paid. Opportunity for hearing shall be granted by the Assessor, and a final decision thereon shall be made as quickly as practicable. (July 16, 1947, 61 Stat. 352, ch. 258, Art. I, title XII, § 5; June 11, 1960, 74 Stat. 203, Pub. L. 86–507, § 1(54).)

AMENDMENT

1960—Act June 11, 1960, inserted words "or by certified mail" following "registered mail."

CROSS REFERENCE

Use of certified mail receipts as prima facie evidence of delivery, see § 14–506.

§ 47–1586e. Jeopardy assessment.

(a) *Authority for making.*—If the Assessor believes that the collection of any tax imposed by this subchapter will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties, the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Collector for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful.

(b) *Bond to stay collection.*—The collection of the whole or any part of the amount of such assessment may be stayed by filing with the Collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties as the Collector deems necessary, conditioned upon the payment of the amount the collection of which is stayed, at the time at which, but for this section, such amount would be due. (July 16, 1947, 61 Stat. 353, ch. 258, Art. I, title XII, § 6.)

§ 47–1586f. Payment of tax.

(a) *Time of payment.*—(1) Except as provided in paragraph (2) of this subsection, the total amount of tax due as shown on the taxpayer's return is due and payable in full at the time prescribed in this article for the filing of such return.

(2) INDIVIDUAL INCOME TAXES.—Any amount of individual income tax due, in excess of that withheld or remitted by way of a declaration of estimated tax, is due and payable in full at the time prescribed in this subchapter for filing an income tax return.

(3) DEFICIENCIES.—Any deficiency in any tax imposed by this subchapter, determined by the Assessor under the provisions of section 47–1586d shall be due and payable within ten days from the date of the assessment.

(4) EMPLOYERS.—Every employer required to deduct and withhold tax under this subchapter shall, for the quarterly period beginning October 1, 1956, and for each quarterly period thereafter, on or before the last day of the month following the close of each quarterly period make return to the Assessor and pay over to the Collector the tax required to be withheld under this subchapter.

(5) JEOPARDY WITHHOLDING ASSESSMENTS.—If the Assessor, in any case, has reason to believe that the collection of the tax provided for in paragraph (4) of subsection (a) of this section is in jeopardy, he may require the employer to make such a return and pay such tax at any time.

(6) PAYMENT OF ESTIMATED TAX.—The estimated tax provided for in this subchapter shall be paid as follows:

(A) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing

of the declaration; the second and third on July 15 and October 15 respectively, of the taxable year and the fourth on January 15 of the succeeding taxable year.

(B) If the declaration is filed after April 15 and not after July 15 of the taxable year and is not required by this subchapter to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration; the second on October 15 of the taxable year and the third on January 15 of the succeeding taxable year.

(C) If the declaration is filed after July 15 and not after October 15 of the taxable year and is not required by this subchapter to be filed on or before July 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second on January 15 of the succeeding taxable year.

(D) If the declaration is filed after October 15 of the taxable year, and is not required by this subchapter to be filed on or before October 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(E) If the declaration is filed after the time prescribed in this subchapter, including cases where extensions of time have been granted, subparagraphs (B), (C) and (D) of paragraph (6) of subsection (a) of this section shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in this subchapter, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

(7) If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect the respective increase or decrease in the estimated tax by reason of such amendment, and if any amendment is made after October 15 of the taxable year any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(8) In the application of paragraphs (4), (5), (6) and (7) of subsection (a) of this section to taxpayers reporting income on a fiscal year basis, there shall be substituted for the dates specified therein, the months corresponding thereto.

(b) Extension of time for payments.—At the request of the taxpayer the Assessor may extend the time for payment by the taxpayer of the amount determined as the tax for a period not to exceed six months from the date prescribed for the payment of the tax or an installment thereof: *Provided, however,* That where the time for filing a return is extended for a period exceeding six months under the provisions of section 47–1564b (b), the Assessor may extend the time for payment of the tax, or the first installment thereof, to the same date to which he has extended the time for filing the return. In such case the amount in respect to which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) Voluntary advance payment.—A tax imposed by this subchapter, or any installment thereof, may be paid, at the election of the taxpayer, prior to the date prescribed for its payment. (July 16, 1947, 61 Stat. 353, ch. 258; Art. I, title XII, § 7; Mar. 31, 1956, 70 Stat. 71, ch. 154, § 10; Mar. 2, 1962, 76 Stat. 10, Pub. L. 87–408, § 201.)

AMENDMENTS

1962—Act Mar. 2, 1962, amended paragraph (1) of subsection (a) which read as follows: "(a) Time of payment—(1) Except as provided in paragraph (2) of this subsection, one-half of the total amount of the tax due as shown on the taxpayer's return shall be paid to the Collector on the 15th day of April following the close of the calendar year and the remaining one-half of such tax shall be paid to the Collector on the 15th day of October following the close of the calendar year, or, if the return be made on the basis of a fiscal year, then one-half of the total amount of such tax shall be paid on the 15th day of the fourth month following the close of the fiscal year and the remaining one-half of such tax shall be paid on the 15th day of the tenth month following the close of the fiscal year", to read as above set out.

1956—Subsec. (a) amended generally by act Mar. 31, 1956. Prior to such amendment, subsection read as follows: "One-half of the total amount of the tax due as shown on the taxpayer's return shall be paid to the Collector on the 15th day of April following the close of the calendar year and the remaining one-half of such tax shall be paid to the Collector on the 15th day of October following the close of the calendar year, or, if the return be made on the basis of a fiscal year, then one-half of the total amount of such tax shall be paid on the 15th day of the fourth month following the close of the fiscal year and the remaining one-half of such tax shall be paid on the 15th day of the tenth month following the close of the fiscal year. Any deficiency in tax determined by the Assessor under the provisions of section 5 of this title shall be due and payable within ten days from the date of the assessment."

APPLICABLE DATE OF 1962 AMENDMENTS

Section 202 of act Mar. 2, 1962, provided that the amendment of paragraph (1) of subsection (a) "shall be applicable to the taxable years beginning after December 31, 1961".

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, applicable to taxable years beginning after Dec. 31, 1955, see section 19 of act Mar. 31, 1956, set out as a note under § 47–1551c.

§ 47–1586g. Withholding of tax.

(a) WITHOLDING OF TAX AT SOURCE.—Whenever the Assessor shall deem it necessary in order to satisfy the District's claim for a tax payable by any foreign corporation or unincorporated business, he may, by rules and regulations, require any person subject to the jurisdiction of the District to withhold and pay to the Collector an amount not in excess of 5 per centum of all income payable by such person to such foreign corporation or unincorporated business. After such foreign corporation or unincorporated business shall have filed all returns required under this title, and the same shall have been audited, the Collector shall refund any overpayment to the taxpayer.

(b) WITHHOLDING OF TAX BY EMPLOYER.—Every employer making payment of wages on or after October 1, 1956, to any employee as defined in this subchapter, shall deduct and withhold a tax upon such wages, such tax to be determined by one of the following methods, to be elected by the employer,

subject to the approval of the Assessor, with respect to any employee—

in accordance with a percentage method of withholding similar in principle to that under section 3402 of the Internal Revenue Code of 1954, to be included in regulations:

in accordance with tables similar in principle to those contained in section 3402 of the Internal Revenue Code of 1954, to be included in regulations;

in accordance with a percentage of the amount of tax withheld under section 3402 of the Internal Revenue Code of 1954, or comparable provision in effect at the time with respect to the withholding of United States income tax, such percentage to be included in regulations; or

by such other method as may be prescribed in regulations.

(1) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days, including Sundays and holidays, equal to the number of days in the period with respect to which such wages are paid.

(2) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employed during such year, or January 1 of such year, whichever is the later.

(3) In determining the amount to be deducted and withheld under this section, the wages may, at the election of the employer, be computed to the nearest dollar.

(4) The Commissioners may, by regulations, authorize employers—

(A) to estimate the wages which will be paid to any employee in any quarter of the calendar year;

(B) to determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid; and

(C) to deduct and withhold upon any payment of wages to such employee during such quarter such amount as may be necessary to adjust the amount actually deducted and withheld upon the wages of such employee during such quarter to the amount that would be required to be deducted and withheld during such quarter if the payroll period of the employee were quarterly.

(5) The Commissioners are authorized to provide by regulation, under such conditions and to such extent as they deem proper, for withholding in addition to that otherwise required under this section in cases in which the employer and the employee agree to such additional withholding. Such additional withholding shall for all purposes be considered the tax required to be deducted and withheld under this section.

(c) OVERLAPPING PAY PERIODS.—If payment of wages is made to an employee by an employer—

(1) with respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employee by such employer;

(2) without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to such employee by such employer;

(3) with respect to a period beginning in one and ending in another calendar year; or

(4) through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays the wages payable by another employer to such employee, the manner of withholding and the amount to be deducted and withheld under this section shall be determined in accordance with regulations promulgated by the Commissioners under which the withholding exemption allowed to the employee in any calendar year shall approximate the withholding exemption allowable with respect to an annual payroll period.

(d) INCLUDED AND EXCLUDED WAGES.—If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than thirty-one consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

(e) WITHHOLDING EXEMPTIONS.—(1) An employee receiving wages shall on any day be entitled to the withholding exemptions allowed under this subchapter.

(2) Every employee shall, on or before October 1, 1956, or before the date of commencement of employment, whichever is later, furnish his employer with a signed withholding exemption certificate relating to the withholding exemptions which he claims, which in no event shall exceed the number to which he is entitled.

(3) Withholding exemption certificates shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished: *Provided,* That certificates furnished before October 1, 1956, shall be considered as furnished on that date.

(4) A withholding exemption certificate which takes effect under this section shall continue in effect with respect to the employer until another such certificate takes effect under this section. If a withholding exemption certificate is furnished to take the place of an existing certificate, the employer, at his option, may continue the old certificate in force with respect to all wages paid on or

before the first status determination date, January 1 or July 1 of each year, which occurs at least thirty days after the date on which such new certificate is furnished.

(5) If, on any day during the calendar year, the withholding exemptions to which the employee may reasonably be expected to be entitled at the beginning of his next taxable year is different from the exemptions to which the employee is entitled on such day, the employee shall in such cases and at such times as the Commissioners may prescribe, furnish the employer with a withholding exemption certificate relating to the exemptions which he claims with respect to such next taxable year, which shall in no event exceed the exemptions to which he may reasonably be expected to be so entitled. Exemption certificates issued pursuant to this subsection shall not take effect with respect to any payment of wages made in the calendar year in which the certificate is furnished.

(6) If, on any day during the calendar year, the withholding exemptions to which the employee is entitled is less than the withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee shall, within ten days thereafter, furnish the employer with a new withholding exemption certificate relating to the withholding exemptions which the employee then claims, which shall in no event exceed the exemptions to which he is entitled on such day. If, on any day during the calendar year, the withholding exemptions to which the employee is entitled is greater than the withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to the withholding exemptions which the employee then claims, which shall in no event exceed the exemptions to which he is entitled on such day.

(7) Withholding exemption certificates shall be in such form and contain such information as the Commissioners may by regulations prescribe.

(f) FAILURE TO WITHHOLD OR PAY AMOUNTS WITHHELD.—(1) Every employer, who fails to withhold or pay to the Collector any sums required by this section to be withheld and paid, shall be personally and individually liable therefor to the District of Columbia; and any sum or sums withheld in accordance with the provisions of this section shall be deemed to be, and shall be, held in trust by the employer for the District of Columbia.

(2) The District of Columbia shall have a lien upon all the property of any employer who fails to withhold or pay over to the Collector sums required to be withheld under this section. If the employer withholds but fails to pay over the amounts withheld to the Collector the lien shall accrue on the date the amounts were withheld. If the employer fails to withhold, the lien shall accrue on the date the amounts were required to be withheld.

(g) STATEMENT TO BE FURNISHED EMPLOYEE.—(1) Every person required to deduct and withhold from an employee a tax under this section, or who would have been required to deduct and withhold a tax under this section if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect to the wages paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of wages is made, a written statement showing the following:

(A) The name and address of such person;

(B) The name and address of the employee and his social security account number;

(C) The total amount of wages as defined in this subchapter; and

(D) The total amount deducted and withheld as tax under this section.

The statement required to be furnished by this subsection in respect of any wages shall be furnished at such other times, shall contain such other information, and shall be in such form, as the Commissioners may by regulation prescribe. A duplicate of such statement if made and filed in accordance with regulations prescribed by the Commissioners shall constitute the return required to be made in respect to such wages.

(2) The Commissioners may promulgate regulations providing for reasonable extensions of time, not in excess of thirty days, to employers required to furnish statements under this subsection.

(h) LIABILITY FOR TAX WITHHELD.—An employer shall be liable for the payment of tax required to be deducted and withheld under this section. Such tax shall be paid to the Collector and shall not be paid to any other person.

(i) DECLARATIONS, REQUIREMENTS, TIME FOR FILING.—(1) Every person residing or domiciled in the District at the times prescribed in paragraph (4) of this subsection shall, at such times, make a declaration of his estimated tax for the taxable year if—

(A) the gross income for the taxable year can reasonably be expected to consist of wages and of not more than $1,000 from sources other than such wages, and can reasonably be expected to exceed the total amount of the personal exemptions to which he is entitled under this subchapter plus $5,000; or

(B) the gross income can reasonably be expected to include more than $1,000 which is not subject to the withholding provisions of this subchapter, and can reasonably be expected to exceed the personal exemptions to which he is entitled under this subchapter, plus $500.

This requirement shall not apply to any elective officer of the Government of the United States or any employee on the staff of an elected officer in the legislative branch of the Government of the United States if such employee is a bona fide resident of the State of residence of such elected officer, or any officer of the executive branch of such Government whose appointment to the office held by him was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States, unless such officers are domiciled within the District on the last day of the taxable year. Under this subchapter, a declara-

tion of estimated tax shall be considered a return of income.

(2) In the declaration required under paragraph (1) of this subsection, the individual shall state—

(A) the amount which he estimates as the amount of income tax due under this subchapter for the taxable year;

(B) the amount which he estimates as the credit for tax withheld for the taxable year under this subchapter;

(C) the excess of the amount estimated under subparagraph (A) over the amount estimated under subparagraph (B), which excess for purposes of this section shall be considered the estimated tax for the taxable year; and

(D) such other information as may be prescribed in regulations promulgated by the Commissioners.

(3) In the case of a husband and wife, a single declaration under this section may be made by them jointly, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if the husband and wife are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them.

(4) The declaration required under paragraph (1) of this subsection shall be filed with the Assessor on or before April 15 of the taxable year, except that if the requirements of paragraph (1) of this subsection are first met—

(A) after April 1 and before July 2 of the taxable year, the declaration shall be filed on or before July 15 of the taxable year;

(B) after July 1 and before October 2 of the taxable year, the declaration shall be filed on or before October 15 of the taxable year; or

(C) after October 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year: *Provided,* That the declaration required to be filed during 1956 may be filed not later than October 15, 1956, if the requirements of paragraph (1) of this subsection are fulfilled at any time prior to October 1, 1956.

(5) An individual may make amendments of a declaration filed during the taxable year under this subsection, under regulations prescribed by the Commissioners.

(6) If on or before January 15 of the succeeding taxable year the taxpayer files a return for the taxable year for which the declaration is required and pays in full the amount computed on the return as payable, then under regulations prescribed by the Commissioners—

(A) if the declaration is not required to be filed during the taxable year, but is required to be filed on or before such January 15, such return shall, for the purposes of this section, be considered as such declaration; and

(B) if the tax shown on the return, reduced by the credits under this subchapter, is greater than the estimated tax shown in a declaration previously made or, in the last amendment thereof, such return shall, for the purposes of this section, be considered as the amendment of the declaration permitted by this subsection to be filed on or before such January 15.

(7) The Commissioners may promulgate regulations governing reasonable extensions of time for filing declarations and paying the estimated tax. Except in the case of taxpayers who are abroad, no such extensions shall be for more than six months.

(8) If the taxpayer is unable to make his own declaration, the declaration shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(9) The provisions of section 47–1564c shall apply to a declaration of estimated tax.

(10) Payment of the estimated tax, or any installment thereof, shall be considered payment on account of the tax for the taxable year.

(j) RELIEF FROM ONE-HALF OF INCOME TAX LIABILITY FOR THE FIRST TAXABLE YEAR UNDER WITHHOLDING.—One-half of the liability for the income tax imposed by this subchapter for the calendar year 1956, or the fiscal year of a taxpayer beginning during such calendar year, upon any resident of the District (other than fiduciaries) shall be discharged. The remainder of the total amount of the income tax due as shown on the taxpayer's return shall be paid to the collector on the 15th of April, 1957, or if the return be made on the basis of a fiscal year the remainder of the total amount of such tax shall be paid on the fifteenth day of the fourth month following the close of the fiscal year.

(k) Repealed. Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

(July 16, 1947, 61 Stat. 353, ch. 258, Art. I, title XII, § 8; Mar. 31, 1956, 70 Stat. 72–77, ch. 154, § 11; Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).)

REFERENCES IN TEXT

Section 3402 of the Internal Revenue Code of 1954, referred to in the text, is classified to 26 U.S.C. § 3402.

AMENDMENTS

1966—Act Sept. 6, 1966, amended section by repealing subsec. (k), which related to the withholding of District of Columbia income taxes by heads of departments or agencies of the United States, with respect to employees thereof whose regular place of employment was within the District of Columbia, and which is now covered by 5 U.S.C. § 5516.

1956—Act Mar. 31, 1956, designated existing provisions as subsec. (a) and added subsecs. (b)—(k).

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, applicable to taxable years beginning after Dec. 31, 1955, see section 19 of act Mar. 31, 1956, set out as a note under § 47–1551c.

NOTES TO DECISIONS

Effective date of lien

Lien for District of Columbia withholding taxes was without further action being taken, perfected or choate at time when income tax was or should have been withheld. *District of Columbia* v. *Hechinger Properties Co.* (D.C. App. 1964, 197 A. 2d 157).

§ 47–1586h. Tax a personal debt.

Every tax imposed by this subchapter, and all increases, interest, and penalties thereof, shall become, from the time it is due and payable, a personal debt, from the person or persons liable to pay the same to the District and shall be entitled to the same priority as other District taxes, and the taxes levied under

this subchapter and the interest and penalties thereon shall be collected by the Collector in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection. (July 16, 1947, 61 Stat. 353, ch. 258, Art. I, title XII, § 9.)

§ 47–1586i. Period of limitation upon assessment and collection.

(a) *General rule.*—Except as provided in subsection (b) of this section—

(1) the amount of income taxes imposed by this subchapter shall be assessed within three years after the return is filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period;

(2) in the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun within twelve months after written request therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of three years after the return is filed. This subsection shall not apply in the case of a corporation unless—

(A) such written request notifies the Assessor that the corporation contemplates dissolution at or before the expiration of such twelve-month period; and

(B) the dissolution is in good faith begun before the expiration of such twelve-month period; and

(C) the dissolution is completed;

(3) if the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within five years after the return was filed;

(4) For the purposes of subsections (a), (1), (a) (2), and (a) (3), a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(b) *False return.*—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) *Waiver.*—Where before the expiration of the time prescribed in subsection (a) for the assessment of the tax, both the Assessor and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(d) *Collection after assessment.*—Where the assessment of any income tax imposed by this subchapter has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within three years after the assessment of the tax or (2) prior to the expiration of any period for collection agreed upon in writing by the Assessor and the taxpayer before the expiration of such three-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. (July 16, 1947, 61 Stat. 354, ch. 258, Art. I, title XII, § 10; May 27, 1949, 63 Stat. 132, ch. 146, title IV, § 417.)

AMENDMENT

1949—Subsec. (a)(4) amended by act May 27, 1949, which deleted proviso suspending the periods of limitation upon the assessment and collection of taxes in cases where the taxpayer has appealed to the Board of Tax Appeals until such cases have been finally disposed of in the Board of Tax Appeals by final decision, dismissal, or otherwise.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act May 27, 1949, applicable to taxable years or portions thereof beginning after Dec. 31, 1948, see section 421 of act May 27, 1949, set out as a note under § 47–1551c.

NOTES TO DECISIONS

Deficiency assessment

Statute of limitations did not bar income tax deficiency assessment. *N. Bord and A. R. Bord* v. *District of Columbia* (1965, 344 F. 2d 560, 120 U.S. App. D.C. 175).

§ 47–1586j. Refunds.

(a) REFUND TO TAXPAYER. Except as to any deficiency taxes assessed under the provisions of section 47–1586d, where there has been an overpayment of any tax imposed by this subchapter, the amount of such overpayment may be credited against any liability in respect of any income or franchise tax or installment thereof (whether such tax was assessed as a deficiency or otherwise), on the part of the person who made the overpayment, and the balance shall be refunded to such person.

No such credit or refund shall be allowed after three years from the time the tax was paid unless before the expiration of such period a claim therefor is filed by the taxpayer, and no tax or part thereof which the Assessor may determine to have been an overpayment shall be refunded after the period prescribed therefor in the Act appropriating the funds from which such refund would otherwise be made. The amount of such credit or refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of such credit or refund. Every claim for credit or refund must be in writing, under oath; must state the specific grounds upon which the claim is founded, and must be filed with the Assessor: *Provided*, That if it shall be determined by the Assessor, the Board of Tax Appeals for the District of Columbia, or any court that any part of any tax which was assessed as a deficiency under the provisions of section 47–1586d was an overpayment, interest shall be allowed and paid upon such overpayment at the rate of one-third of 1 per centum per month or portion of a month from the date such overpayments were paid until the date of refund, and in addition thereto any in-

terest upon such overpayment which was paid by the taxpayer shall be refunded.

(b) REFUND TO EMPLOYER.—(1) Where there has been an overpayment of tax under section 47–1586g, refund or credit shall be made to the employer only to the extent that the amount of such overpayment was not deducted and withheld under section 47–1586g by the employer.

(2) Unless written application for refund or credit is received by the Assessor from the employer within three years from the date the overpayment was made, no refund or credit shall be allowed.

(c) REFUND OF OVERPAYMENT OF TAX WITHHELD.—(1) Where the amount of the tax withheld at the source under section 47–1586g exceeds the taxes imposed by this subchapter against which the tax so withheld may be credited under this section, the amount of such excess shall be considered an overpayment: *Provided,* That, any other provision of law notwithstanding, interest on any overpayment of taxes collected under the withholding provisions of this subchapter and under any declaration of estimated tax shall not begin to accrue until ninety days after the overpayment is made or after the date of filing of a final return, whichever is later.

(2) PRESUMPTION AS TO DATE OF PAYMENT.—For the purposes of this section, any tax actually deducted and withheld at the source during any calendar year under this subchapter shall, in respect of the recipient of the income, be deemed to have been paid on the fifteenth day of the fourth month following the close of the taxable year with respect to which such tax is allowable as a credit under this subchapter. For the purpose of this section, any amount paid prior to the fifteenth day of the fourth month following the close of the taxable year as estimated tax for such taxable year shall be deemed to have been paid on the fifteenth day of the fourth month following the close of such taxable year.

(3) Authority to refund overpayments of taxes collected pursuant to section 47–1586g is vested in the Commissioners or their duly authorized representatives. Such refunds shall be made from moneys paid pursuant to the provisions of section 47–1586g and retained in a special account in the Treasury of the United States. The total amount so retained shall not exceed $500,000 at any one time. Any excess in such special account not required for refunding overpayments collected pursuant to section 47–1586g at any time, as determined by the Assessor, shall be transferred to the general fund of the District. (July 16, 1947, 61 Stat. 355, ch. 258, Art. I, title XII, § 11; May 27, 1949, 63 Stat. 133, ch. 146, title IV, § 418; Mar. 31, 1956, 70 Stat. 78, ch. 154, § 12.)

AMENDMENTS

1956—Subsec. (a), formerly entire section, so designated by act Mar. 31, 1956, and amended by substituting "may be credited against any liability in respect of any income or franchise tax or installment thereof (whether such tax was assessed as a deficiency or otherwise), on the part of the person who made the overpayment, and the balance shall be refunded to such person" for "shall be credited against any income tax or installment thereof, whether such tax was assessed as a deficiency or otherwise, then due from the taxpayer, and the balance shall be refunded to the taxpayer", and "at the rate of one-third of 1 per centum per month or portion of a month" for "at the rate of 4 per centum per annum."

Subsecs. (b) and (c) added by act Mar. 31, 1956.

1949—Act May 27, 1949, authorized the refunding of interest upon overpayments paid by the taxpayer.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, applicable to taxable years beginning after Dec. 31, 1955, see section 19 of act Mar. 31, 1956, set out as a note under § 47–1551c.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act May 27, 1949, applicable to taxable years or portions thereof beginning after Dec. 31, 1948, see section 421 of act May 27, 1949, set out as a note under § 47–1551c.

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court and the member thereof to be known as the judge of the District of Columbia Tax Court, see § 47–2402.

§ 47–1586k. Closing agreements.

The Assessor is authorized to enter into a written agreement with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any income tax for any period ending prior to the date of the agreement. If such agreement is approved by the Commissioners within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—the case shall not be reopened as to the matters agreed upon or the agreement modified; and in any suit or proceeding relating to the tax liability of the taxpayer such agreement shall not be annulled, modified, set aside, or disregarded. (July 16, 1947, 61 Stat. 355, ch. 258, Art. I, title XII, § 12.)

§ 47–1586*l*. Compromises.

(a) *Authority to make.*—Whenever in the opinion of the Commissioners there shall arise with respect of any tax imposed under this subchapter any doubt as to the liability of the taxpayer or the collectibility of the tax for any reason whatsoever, the Commissioners may compromise such tax.

(b) *Concealment of assets.*—Any person who, in connection with any compromise under this section or offer of such compromise or in connection with any closing agreement under this title or offer to enter into any such agreement, willfully (1) conceals from any officer or employee of the District of Columbia any property belonging to the estate of the taxpayer or other person liable with respect of the tax, or (2) receives, destroys, mutilates, or falsifies any book, document, or record or makes under oath any false statement relating to the estate or the financial condition of the taxpayer or to the person liable in respect of the tax, shall, upon conviction thereof, be fined not more than $5,000 or imprisoned for not more than one year, or both. All prosecutions under this section shall be brought in the District of Columbia Court of General Sessions on information by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia.

(c) *Of penalties and interest.*—The Commissioners shall have the power for cause shown to compromise any penalty which may be imposed by the Assessor under the provisions of this subchapter. The Assessor may adjust any interest where, in his

opinion, the facts in the case warrant such action. (July 16, 1947, 61 Stat. 355, ch. 258, Art. I, title XII, § 13; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 47–1586m. Definition of "person".

The term "person" as used in this title includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under duty to perform the act in respect to which the violation occurs. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, title XII, § 14.)

REFERENCES IN TEXT

The term "title" as used in this section refers to §§ 47–1586 to 47–1586n.

§ 47–1586n. Payment to Collector and receipts.

The taxes provided under this subchapter shall be collected by the Collector and the revenues derived therefrom shall be turned over to the Treasury of the United States for credit to the District in the same manner as other revenues are turned over to the United States Treasury for credit to the District. The Collector shall, upon written request, give to the person making payment of any income tax a full written or printed receipt therefor. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, title XII, § 15.)

TITLE XIII.—PENALTIES AND INTEREST

§ 47–1589. Failure to file return.

(a) FAILURE TO FILE RETURN.—In case of any failure to make and file a return required by this subchapter, within the time prescribed by law or prescribed by the Commissioners or Assessor in pursuance of law, 5 per centum of the tax shall be added to the tax for each month or fraction thereof that such failure continues, not to exceed 25 per centum in the aggregate, except that when a return is filed after such time and it is shown that the failure to file it was due to reasonable cause and not due to willful neglect, no such addition shall be made to the tax. With respect to declarations of estimated tax, for the purposes of this subsection, the amount and due date of each installment shall be the same as if a declaration had been filed within the time prescribed showing an estimated tax equal to the correct tax reduced by the amount of credit for tax withheld.

(b) FAILURE TO FILE EMPLOYER'S QUARTERLY RETURN.—An employer required to withhold taxes on wages and make quarterly returns to the Assessor and to make payment of amounts withheld to the Collector who fails to withhold such taxes, or to make such returns, or who fails to remit amounts collected to the Collector, shall be subject to a civil penalty (in addition to criminal penalties provided for in this subchapter) equal to 25 per centum of the amount of taxes that should have been properly withheld and paid over to the Collector for each such failure. Such penalty shall be assessed by the Assessor and collected by the Collector.

(c) UNDERESTIMATE OF TAX BY RESIDENTS.—If 80 per centum of the tax, determined without regard to the amount of credit for tax withheld, exceeds the estimated tax, increased by such credit, there shall be added to the tax an amount equal to such excess, or equal to 6 per centum of the amount by which such tax so determined exceeds the estimated tax so increased, whichever is the lesser. This subsection shall not apply to the taxable year in which falls the death of the taxpayer, nor shall it apply to the taxable year in which the taxpayer makes a timely payment on April 15, July 15, and October 15, of such year, and January 15 of the succeeding year, and the total of all such payments is an amount at least as great as though computed on the basis of the facts shown on his return for the preceding taxable year.

(d) COLLECTION OF PENALTIES ADDED TO TAX.—The amount added to any tax under this section shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be assessed and collected. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, title XIII, § 1; Mar. 31, 1956, 70 Stat. 79, ch. 154, § 13.)

AMENDMENT

1956—Subsec. (a), formerly first sentence of section, so designated by act Mar. 31, 1956, and amended to provide for the amount and due date of each installment with respect to declarations of estimated tax.

Subsecs. (b) and (c) added by act Mar. 31, 1956.

Subsec. (d), formerly second sentence of section, so designated by act Mar. 31, 1956.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, applicable to taxable years beginning after Dec. 31, 1955, see section 19 of act Mar. 31, 1955, set out as a note under § 47–1551c.

NOTES TO DECISIONS

Basis of Court's decision

Where Tax Court, in reaching decision on assessment of negligence penalty, did not rely upon ground that taxpayers failed to report their proceeds of sale of corporate asset as nontaxable income in space provided on return, court on appeal could not uphold Tax Court's findings on that ground. *N. Bord and A. R. Bord* v. *District of Columbia* (1965, 344 F. 2d 560, 120 U.S. App. D.C. 175).

§ 47–1589a. Interest on deficiencies.

(a) Assessment and Collection.—Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the Collector, and shall be collected as a part of the tax, at the rate of one-half of 1 per centum per month or portion of a month from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed.

(b) If extension granted for payment of deficiency.—If the time for payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended at the rate of one-half of 1 per centum per month or portion of a month for the period of the extension. If a part of the deficiency the time for payment of which is so extended is not paid in full, together with all penalties and interest due thereon, prior to the expiration of the period of the extension, then interest at the rate of one-half of 1 per centum

per month or portion of a month shall be added and collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, title XIII, § 2; Mar. 31, 1956, 70 Stat. 79, ch. 154, § 14.)

AMENDMENT

1956—Act Mar. 31, 1956, substituted "one-half of 1 per centum per month or portion of a month" for "6 per centum per annum" in subsecs. (a) and (b).

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, applicable to taxable years beginning after Dec. 31, 1955, see section 19 of act Mar. 31, 1956, set out as a note under § 47–1551c.

§ 47–1589b. Additions to the tax in case of deficiency.

(a) Negligence.—If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency.

(b) Fraud.—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, title XIII, § 3.)

§ 47–1589c. Additions to the tax in case of nonpayment.

(a) Tax shown on return.

(1) *General rule.*—Where the amount determined by the taxpayer as the tax imposed by this subchapter, or any installment thereof, or any part of such amount or installment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax interest upon such unpaid amount at the rate of one-half of 1 per centum per month or portion of a month from the date prescribed for its payment until it is paid.

(2) *If extension granted.*—Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any installment thereof, has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 47–1589d is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in subsection (a) (1) of this section, interest at the rate of one-half of 1 per centum per month or portion of a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) Deficiency.—Where a deficiency, or any interest or additional amounts assessed in connection therewith under section 47–1589a or under section 47–1589b, or any addition to the tax in case of delinquency provided for in section 47–1589 is not paid in full within ten days from the date of assessment thereof, there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of one-half of 1 per centum per month or portion of a month from the date of such notice and demand until it is paid. (July 16, 1947, 61 Stat. 357, ch. 258, Art. I, title XIII, § 4; Mar. 31, 1956, 70 Stat. 79, ch. 154, § 14.)

AMENDMENT

1956—Act Mar. 31, 1956, substituted "one-half of 1 per centum per month or portion of a month" for "6 per centum per annum" in subsecs. (a), (b) and (c).

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, applicable to taxable years beginning after Dec. 31, 1955, see section 19 of act Mar. 31, 1956, set out as a note under § 47–1551c.

§ 47–1589d. Time extended for payment of tax shown on return.

If the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, is extended under the authority of section 47–1586f (b), there shall be collected, as a part of such amount, interest thereon at the rate of one-half of 1 per centum per month or portion of a month from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension. (July 16, 1947, 61 Stat. 357, ch. 258, Art. I, title XIII, § 5; Mar. 31, 1956, 70 Stat. 79, ch. 154, § 14.)

AMENDMENT

1956—Act Mar. 31, 1956, substituted "one-half of 1 per centum per month or portion of a month" for "6 per centum per annum."

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, applicable to taxable years beginning after Dec. 31, 1955, see section 19 of act Mar. 31, 1956, set out as a note under § 47–1551c.

§ 47–1589e. Penalties.

(a) Willful violation.—Any person required under this subchapter to pay or collect any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of this subchapter, who willfully refuses to pay or collect such tax, to make such return, to keep such records, or to supply such information, or who makes a false or fraudulent return, or who willfully attempts in any manner to defeat or evade the tax imposed by sections 47–1551 to 47–1595, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall be fined not more than $5,000 or imprisoned for not more than one year, or both, together with costs of prosecution. All prosecutions under this section shall be brought in the District of Columbia Court of General Sessions on information by the Corporation Counsel or one of his assistants in the name of the District.

(b) Definition of "person".—The term "person" as used in this title includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under duty to perform the act in respect to which the violation occurs. (July 16, 1947, 61 Stat. 357, ch. 258, Art. I, title XIII, § 6; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

REFERENCES IN TEXT

The term "title", as used in this section, refers to sections 47–1589 to 47–1589e.

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded Act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

NOTES TO DECISIONS

Constitutionality

The District of Columbia Income and Franchise Tax Act of 1947 is not unconstitutional on any theory of "taxation without representation". *E. Green* v. *District of Columbia* (D.C. App. 1966, 221 A. 2d 441).

TITLE XIV.—LICENSES

§ 47–1591. Requirement.

(a) CORPORATION OR UNINCORPORATED BUSINESS.—No corporation or unincorporated business, except such corporations or unincorporated businesses as are expressly exempt under the provisions of section 47–1554, shall engage in or carry on any trade or business in the District without a license so to do issued under this subchapter in addition to all other licenses and permits required by law, except as hereinafter provided. For the first calendar year to which this subchapter is applicable, no license shall be required of any corporation licensed under the provisions of sections 47–1501 to 47–1547. Every corporation not so licensed and every unincorporated business shall obtain such license within sixty days after the approval of sections 47–1551 to 47–1595. Every corporation or unincorporated business which commences to engage in or carry on any trade or business in the District after the passage of sections 47–1551 to 47–1595 shall obtain a license under this subchapter within sixty days after the date of the commencement of such trade or business in the District. Applications for licenses shall be filed with the Assessor prior to January 1 of each year upon forms prescribed and furnished by the Assessor, and each application shall be accompanied by a fee of $10: *Provided, however,* That any unincorporated business having a gross income for the taxable year of $5,000 or less shall not be required to obtain the license provided for in this title.

(b) TRADE, BUSINESS, OR PROFESSIONAL LICENSE.—Every person, other than a corporation, who, as an individual, sole proprietor, partner, associate, or joint venturer shall, in the District of Columbia, engage in or conduct a trade, business, or profession, which is excluded from the imposition of the District of Columbia tax on unincorporated businesses under the definition set forth in section 47–1574, shall file with the Assessor prior to December 1st of the calendar year 1957, and prior to December 1st of each calendar year thereafter, an application for a trade, business, or professional license, accompanied by a license fee of $25, which license, upon issuance, shall entitle such person to engage in or conduct a trade, business, or profession in the District of Columbia during the next ensuing calendar year: *Provided,* That no license shall be required under this subsection to be obtained by any individual or sole proprietor engaging in or conducting a trade, business, or profession in the District of Columbia whose annual gross receipts from such trade, business, or profession in the District of Columbia were, during the prior calendar year, less than $5,000, and no partner, associate, or joint venturer shall be required to obtain a license where the annual gross receipts of the partnership, association, or joint venture in the District of Columbia were, during the prior calendar year, less than $5,000: *And provided further,* That every person who, during any calendar year, commences as an individual, sole proprietor, partner, associate, or joint venturer, to engage in or conduct a trade, business, or profession in the District of Columbia without having so engaged in the prior calendar year, shall, within fifteen days after the date in said commencement year on which such trade, business, or profession attains gross receipts of $5,000, make application to the Assessor, accompanied by a license fee of $25, for the license required by this subsection for the calendar year during which the trade, business, or profession was commenced, and any person who, during the prior calendar year, although engaged in a trade, business, or profession, did not attain gross receipts of $5,000, shall, within fifteen days after the date within the calendar year on which such trade, business, or profession attains gross receipts of $5,000, make application to the Assessor, accompanied by a license fee of $25, for the license required by this subsection for the calendar year during which the trade, business, or profession, attained gross receipts of $5,000.

No license shall be required (1) of any registered nurse or practical nurse for the purpose of engaging in or conducting a trade, business, or profession of registered nurse or practical nurse in the District of Columbia, (2) of any person licensed under section 35–425, for the purpose of acting within the District of Columbia for any life insurance company as a general agent, agent, or solicitor in the solicitation or procurement of applications for insurance, or (3) of any person engaged in the ministry of healing by prayer or spiritual means alone and who is a member of a church or denomination whose tenets and teachings include the practice of such healing. No officer or employee of the Government of the United States, or the government of the District of Columbia, and no individual in private or public employment who is compensated for services performed by him as an employee for his employer shall, for such employment, be required to obtain a license and, in the case of a partnership, association, or joint venture, no license shall be required of any partner, associate, or joint venturer who does not himself engage in or conduct the trade, business, or professional activities of the partnership, association, or joint venture in the District of Columbia. The license required to be obtained under the provisions of this subsection shall be in addition to all other licenses, fees, and permits required by law. (July 16, 1947, 61 Stat. 357, ch. 258, Art. I, title XIV, § 1; May 27, 1949, 63 Stat. 133, ch. 146, title IV, § 419; Mar. 31, 1956, 70 Stat. 79, ch. 154, § 15; Sept. 4, 1957, 71 Stat. 606, Pub. L. 85–281, § 7.)

AMENDMENTS

1957—Subsec. (b) amended by act Sept. 4, 1957, which added provisos, and exempted persons licensed under § 35–425, persons engaged in the ministry of healing by prayer or spiritual means alone and who are members of a church or denomination whose tenets and teachings include the practice of healing, officers and employees of the Government of the United States or of the Government of the District of Columbia, individuals in private or public employment compensated for services performed by them as employees for their employer, and partners, associates, or joint venturers who do not engage in or conduct the trade, business or professional activities.

1956—Subsec. (a), formerly entire section, so designated by act Mar. 31, 1956.

Subsec. (b) added by act Mar. 31, 1956.

1949—Act May 27, 1949, exempted unincorporated businesses having a gross income for the taxable year of $5,000 or less from the license requirement.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment of section by act Sept. 4, 1957, applicable to the calendar year 1958 and subsequent calendar years, see section 8 of act Sept. 4, 1957, set out as a note under § 47–1557a.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, applicable to taxable years beginning after Dec. 31, 1955, see section 19 of act Mar. 31, 1956, set out as a note under § 47–1551c.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment of section by act May 27, 1949, applicable to taxable years or portions thereof beginning after Dec. 31, 1948, see section 421 of act May 27, 1949, set out as a note under § 47–1551c.

§ 47–1591a. Duration of license.

All licenses issued under this title shall be in effect for the duration of the calendar year for which issued, unless revoked as provided in this title, and shall expire at midnight on the 31st day of December of each year. No licenses issued under this title may be transferred to any other person. (July 16, 1947, 61 Stat. 358, ch. 258, Art. I, title XIV, § 2; Mar. 31, 1956, 70 Stat. 80, ch. 154, § 16.)

REFERENCES IN TEXT

The term "title", as used in this section, refers to sections 47–1591 to 47–1591f.

AMENDMENT

1956—Act Mar. 31, 1956, substituted "No licenses issued under this title may be transferred to any other person" for "No license may be transferred to any other corporation or unincorporated business."

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, applicable to taxable years beginning after Dec. 31, 1955, see section 19 of act Mar. 31, 1956, set out as a note under § 47–1551a.

§ 47–1591b. Licenses to be posted.

All licenses granted under this title to persons having an office or place of business in the District must be conspicuously posted in the office or on the premises of the licensee, and said license shall be accessible at all times for inspection by the police or other officers duly authorized to make such inspection. (July 16, 1947, 61 Stat. 358, ch. 258, Art. I, title XIV, § 3; Mar. 31, 1956, 70 Stat. 80, ch. 154, § 17.)

AMENDMENT

1956—Act Mar. 31, 1956, substituted "persons" for "corporations or unincorporated businesses."

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, applicable to taxable years beginning after Dec. 31, 1955, see section 19 of act Mar. 31, 1956, set out as a note under § 47–1551c.

§ 47–1591c. Repealed. May 3, 1948, 62 Stat. 207, ch. 246, § 4.

Section, act July 16, 1947, 61 Stat. 358, ch. 258, Art. I, title XIV, § 4, provided for license or certificate of agent or employee of corporation or unincorporated business having no office or place of business in the District.

§ 47–1591d. Revocation.

The Commissioners may, after hearing, revoke any license issued hereunder for failure of the licensee to file a return or corrected return within the time required by this subchapter, or to pay any installment of tax when due. (July 16, 1947, 61 Stat. 358, ch. 258, Art. I, title XIV, § 5.)

§ 47–1591e. Renewal.

Licenses shall be renewed for the ensuing calendar year upon application as provided in section 47–1591. No license shall be issued or renewed if the taxpayer has failed or refused to pay any tax or installment thereof, or penalties or interest thereon, imposed by this subchapter: *Provided, however,* That, the Commissioners, in their discretion, for cause shown, may, on such terms or conditions as they may determine or prescribe, waive the provisions of this section. (July 16, 1947, 61 Stat. 358, ch. 258, Art. I, title XIV, § 6.)

§ 47–1591f. Penalty for failure to obtain license.

Any person engaged in or carrying on any trade or business in the District or receiving income from sources within the District within the meaning of sections 47–1580 to 47–1580b without having obtained a license so to do, within the time prescribed by section 47–1591, and any person engaging in or carrying on any trade or business in the District or receiving income from sources within the District within the meaning of sections 47–1580 to 47–1580b for or on behalf of any corporation or unincorporated business not having a license so to do, shall, upon conviction thereof, be fined not more than $300 for each and every failure, refusal, or violation, and each and every day that such failure, refusal, or violation continues shall constitute a separate and distinct offense. All prosecutions under this section shall be brought in the District of Columbia Court of General Sessions on information by the Corporation Counsel or any of his assistants in the name of the District: *Provided, however,* That the provisions of this section shall not apply to mere collection by an agent of income of a corporation or unincorporated business not having the license required under this title. (July 16, 1947, 61 Stat. 358, ch. 258, Art. I, title XIV, § 7; Mar. 31, 1956, 70 Stat. 80, ch. 154, § 18; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

REFERENCES IN TEXT

The term "title", as used in this section, refers to §§ 47–1591 to 47–1591f.

AMENDMENT

1956—Act Mar. 31, 1956, substituted "Any person engaged" for "Any corporation or unincorporated business engaged."

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, applicable to taxable years beginning after Dec. 31, 1955, see section 19 of act Mar. 31, 1956, set out as a note under § 47–1551c.

TITLE XV.—APPEAL

§ 47–1593. Appeal to Board of Tax Appeals for the District of Columbia.

Any person aggrieved by any assessment of a deficiency in tax determined and assessed by the Assessor under the provisions of section 47–1586d and any person aggrieved by the denial of any claim

for refund made under the provisions of section 47–1586j, may, within ninety days from the date of the assessment of the deficiency or from the date of the denial of a claim for refund, as the case may be, appeal to the Board of Tax Appeals for the District of Columbia, in the same manner and to the same extent as set forth in sections 47–2403, 47–2404, 47–2407 to 47–2411. (July 16, 1947, 61 Stat. 359, ch. 258, Art. I, title XV, § 1.)

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court and the member thereof to be known as the judge of the District of Columbia Tax Court, see § 47–2402.

NOTES TO DECISIONS

In general

Where corporation delivered to examiner in office of District of Columbia Assessor of Taxes, checks in respect to business privilege tax assessed against corporation, and a letter protesting the tax, and Assessor's office handed on the checks to office of Collector of Taxes, there was sufficient payment of tax to Collector to permit an appeal by corporation to District of Columbia Board of Tax Appeals. *Owens-Illinois Glass Co.* v. *District of Columbia,* (1953, 204 F. 2d 29, 92 U. S. App. D. C. 15).

§ 47–1593a. Election of remedy.

The remedy provided in section 47–1593 shall not be deemed to take away from the taxpayer any remedy which he might have under any other provision of law, but no suit by the taxpayer for the recovery of any part of any tax shall be instituted in any court if the taxpayer has elected to file an appeal with respect to such tax in accordance with the provisions of section 47–1593. (July 16, 1947, 61 Stat. 359, ch. 258, Art. I, title XV, § 2.)

NOTES TO DECISIONS

Choice of remedy

Under District of Columbia Code to effect that administrative remedy for recovery of taxes shall not be deemed to take away from taxpayer any remedy which he might have had under any other provision of law, taxpayer is permitted recourse to either administrative remedy or common-law suit for recovery of District of Columbia taxes, and inasmuch as decision of Tax Court or filing of an appeal with that court precludes taxpayer from filing suit under his common-law remedy, exhaustion of administrative remedy can in no sense be a condition precedent to a common-law action. *District of Columbia* v. *J. C. Brady* (1960, 288 F. 2d 108, 109 U.S. App. D.C. 324).

TITLE XVI.—RULES AND REGULATIONS

§ 47–1595. Commissioners to prescribe and publish rules.

The Commissioners shall prescribe and publish such rules and regulations, consistent with the provisions of this subchapter, as may be necessary and proper for its enforcement and efficient administration. (July 16, 1947, 61 Stat. 359, ch. 258, Art. I, title XVI, § 1.)

§ 47–1595a. Commissioners authorized to make rules and regulations in regard to District of Columbia Revenue Act of 1956.

The Commissioners of the District of Columbia are authorized to make rules and regulations to carry out the provisions of this Act. (Mar. 31, 1956, 70 Stat. 71, ch. 154, title VI, § 601.)

REFERENCES IN TEXT

"This Act", referred to in the text, means the District of Columbia Revenue Act of 1956, which added this section, amended sections 25–124, 25–138, 47–1551c, 47–1557b, 47–1564a, 47–1567a, 47–1567b, 47–1567d, 47–1586f, 47–1586g, 47–1586j, 47–1589, 47–1589a, 47–1589c, 47–1589d, 47–1591, 47–1591a, 47–1591b, 47–1591f, 47–2501b, 47–2601, 47–2605 and 47–2701, and enacted provisions set out as notes under sections 25–124, 47–1551c and 47–2601.

Chapter 16.—INHERITANCE AND ESTATE TAXES

ARTICLE I—INHERITANCE TAX

Sec.
47–1601. Imposition of tax.
47–1602. Tax based on market value—Appraisal.
47–1603. Appraisal deemed true value—Tax to be lien—Exceptions.
47–1604. Report by decedent's personal representative—Contents—Payment.
47–1605. Collection of tax from distributive share.
47–1606. Property not under control of personal representative.
47–1607. Life and future estates—Payment of tax—Lien.

ARTICLE II—ESTATE TAX

47–1608. Imposition of tax—Additional levy on transfers.
47–1609. Credits—Restriction.
47–1610. Not to exceed difference between maximum credit and levy by States.
47–1611. Benefits to District.
47–1612. Tax on transfer of nonresidents' real and personal property.
47–1613. Executor to file copy of Federal return with assessor.
47–1614. Assessment on basis of return.
47–1615. Tax payable within seventeen months.

ARTICLE III—GENERAL

47–1616. Liability of bond for assessments—Limitation.
47–1617. Monthly report of names of decedents by register of wills.
47–1618. Administration—Rules—Testimony—Production of books and records.
47–1619. Arrears.
47–1620. Enforcement.
47–1621. Failure to file return—False return—Penalty.
47–1622. Wilful failure to pay taxes, make return—Penalty.
47–1623. Release of lien.
47–1624. Transfers of assets—Notice—Portion retained to pay tax—Assessor to examine assets—Issuance of certificate.
47–1625. Bureau of Internal Revenue to supply information to Commissioners.
47–1626. Assessor to determine tax if return not filed when due.
47–1627. Assessor may compound and settle tax.
47–1628. Definitions.
47–1629. Situs of intangibles—Trust estates—Aliens.
47–1630. Compromise and settlement of taxes.

ARTICLE I—INHERITANCE TAX

§ 47–1601. Imposition of tax.

Taxes shall be imposed in relation to estates of decedents, the shares of beneficiaries of such estates, and gifts as hereinafter provided:

(a) All real property and tangible and intangible personal property, or any interest therein, having its taxable situs in the District of Columbia, transferred from any person who may die seized or possessed thereof, either by will or by law, or by right of survivorship, and all such property, or interest therein, transferred by deed, grant, bargain, gift, or sale (except in cases of a bona fide purchase for full consideration in money or money's worth), made or intended to take effect in possession or enjoyment after the death of the decedent, or made in contemplation of death, to or for the use of, in trust or otherwise (including property of which the decedent

has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from such property or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom), to the father, mother, husband, wife, children by blood or legally adopted children, or any other lineal descendants or lineal ancestors of the decedent, shall be subject to a tax as follows: 1 per centum of so much of said property as is in excess of $5,000 and not in excess of $50,000; 2 per centum of so much of said property as is in excess of $50,000 and not in excess of $100,000; 3 per centum of so much of said property as is in excess of $100,000 and not in excess of $500,000; 4 per centum of so much of said property as is in excess of $500,000 and not in excess of $1,000,000; 5 per centum of so much of said property as is in excess of $1,000,000.

(b) So much of said property so transferred to each of the brothers and sisters of the whole or half blood of the decedent shall be subject to a tax as follows: 3 per centum of so much of said property as is in excess of $2,000 and not in excess of $25,000; 4 per centum of so much of said property as is in excess of $25,000 and not in excess of $50,000; 6 per centum of so much of said property as is in excess of $50,000 and not in excess of $100,000; 8 per centum of so much of said property as is in excess of $100,000 and not in excess of $500,000; 10 per centum of so much of said property as is in excess of $500,000.

(c) So much of said property so transferred to any person other than those included in paragraphs (a) and (b) of this section and all firms, institutions, associations, and corporations shall be subject to a tax as follows: 5 per centum of so much of said property as is in excess of $1,000 and not in excess of $25,000; 7 per centum of so much of said property as is in excess of $25,000 and not in excess of $50,000; 9 per centum of so much of said property as is in excess of $50,000 and not in excess of $100,000; 12 per centum of so much of said property as is in excess of $100,000 and not in excess of $500,000; 15 per centum of so much of said property as is in excess of $500,000.

(d) Executors, administrators, trustees, and other persons making distribution shall only be discharged from liability for the amount of such tax, with the payment of which they are charged, by paying the same as hereinafter described.

(e) Property transferred exclusively for public or municipal purposes, to the United States or the District of Columbia, or exclusively for charitable, educational, or religious purposes, shall be exempt from any and all taxation under the provisions of this section.

(f) Where any beneficiary has died or may hereafter die within six months after the death of the decedent and before coming into the possession and enjoyment of any property passing to him, and before selling, assigning, transferring, or in any manner contracting with respect to his interest in such property, such property shall be taxed only once, and if the tax on the property so passing to said beneficiary has not been paid, then the tax shall be assessed on the property received from such share by each beneficiary thereof, finally entitled to the possession and enjoyment thereof, as if he had been the original beneficiary, and the exemptions and rates of taxation shall be governed by the respective relationship of each of the ultimate beneficiaries to the first decedent.

(g) The provisions of sections 47–1601 to 47–1607 shall apply to property in the estate of every person who shall die after August 18, 1937.

(h) The transfer of any property, or interest therein, within 2 years prior to death, shall, unless shown to the contrary, be deemed to have been made in contemplation of death.

(i) All property and interest therein which shall pass from a decedent to the same beneficiary by one or more of the methods specified in this section, and all beneficial interests which shall accrue in the manner herein provided to such beneficiary on account of the death of such decedent, shall be united and treated as a single interest for the purpose of determining the tax hereunder.

(j) Whenever any person shall exercise a general power of appointment derived from any disposition of property, made either before or after the passage of this chapter, such appointment, when made, shall be deemed a transfer taxable, under the provisions of this chapter, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power; and whenever any person possessing such power of appointment so derived shall omit or fail to exercise the same, within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this chapter shall be deemed to take place to the extent of such omissions or failure in the same manner as though the person or persons thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by the will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

(k) The doctrine of equitable conversion shall not be invoked in the assessment of taxes under this chapter.

(*l*) Works of art owned by a nonresident of the United States who is not a citizen of the United States lent without charge to the Trustees of the National Gallery of Art solely for exhibition without charge to the general public shall not be deemed to have a taxable situs in the District of Columbia. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, Art. I, § 1; May 16, 1938, 52 Stat. 360, ch. 223, § 5(a); July 26, 1939, 53 Stat. 1111, ch. 367, title V, § 1; June 24, 1946, 60 Stat. 303, ch. 462, § 1; Sept. 1, 1950, 64 Stat. 576, ch. 836, § 2; Aug. 1, 1955, 69 Stat. 427, ch. 440, § 1.)

AMENDMENTS

1955—Subsec. (e) amended by act Aug. 1, 1955, which deleted words "within the District of Columbia, and property transferred to the American National Red Cross" following "religious purposes."

1950—Subsec. (*l*) added by act Sept. 1, 1950.

1946—Subsec. (e) amended by act June 24, 1946, which inserted words "and property transferred to the American National Red Cross."

1939—Subsec. (a) amended by act July 26, 1939, which increased the rate of tax from 1 per centum on so much of the clear value of property so transferred to each beneficiary as is in excess of $5,000 to 1 per centum of the

property in excess of $5,000 and not in excess of $50,000, 2 per centum for property in excess of $50,000 and not in excess of $100,000, 3 per centum for property in excess of $100,000 and not in excess of $500,000, 4 per centum for property in excess of $500,000 and not in excess of $1,000,000, and 5 per centum for property in excess of $1,000,000.

Subsec. (b) amended generally by act July 26, 1939. Prior to such amendment, subsection read as follows: "So much of said property as is in excess of $2,000, so transferred to each of the brothers, sisters, nephews, and nieces of the whole blood of the decedent shall be subject to a tax of 3 per centum thereof."

Subsec. (c) amended generally by act July 26, 1939. Prior to such amendment, subsection read as follows: "So much of said property as is in excess of $1,000, sp transferred to each of the grandnephews and grandnieces of the decedent and all persons other than those included in paragraphs (a) and (b) of this section, and all firms, institutions, associations, and corporations, shall be subject to a tax of 5 per centum thereof."

1938—Subecs. (j) and (k) added by act May 16, 1938.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 4 of act Sept. 1, 1950, provided in part that subsec. (*l*) shall be applicable only with respect to decedents dying after Sept. 1, 1950.

EFFECTIVE DATE OF 1946 AMENDMENT

Section 1 of act June 24, 1946, provided in part that the amendment of subsec. (e) of this section shall be effective as of the effective date of title V of the District of Columbia Revenue Act of 1937. Title V of said Act became effective at 12:01 antemeridian on August 18, 1937.

EFFECTIVE DATE OF 1938 AMENDMENT

Section 5(h) of act May 16, 1938, provided that: "The provisions of this section [adding sections 47–1612 and 47–1625 and amending this section and sections 47–1603, 47–1606, 47–1607, 47–1621 and 47–1624] shall become effective at 12.01 antemeridian on the date immediately following the date of approval of this Act [May 16, 1938]."

EFFECTIVE DATE

Section 14 of Article III of title V, formerly section 25 of Article II of title V, of act Aug. 17, 1937, as renumbered and amended by act July 26, 1939, 53 Stat. 1118, ch. 367, title V, § 1, provided that: "The provisions of this title [this chapter] shall become effective at 12:01 antemeridian, the day immediately following its approval [Aug. 17, 1937]."

REFUND OF TAXES PAID FOR TRANSFER OF PROPERTY TO AMERICAN NATIONAL RED CROSS

Section 2 of act June 24, 1946, provided that: "This Act [amending subsec. (e) of this section] shall not authorize nor require the refund of any taxes paid for the transfer of any property to the American National Red Cross except such taxes as may have been paid under protest."

CROSS REFERENCES

Additional tax on right to transfer estate, see § 47–1608 et seq.

Situs of intangibles, see § 47–1629.

NOTES TO DECISIONS

Alienation of property

That decedent's real estate was subject to statutory lien to secure payment of decedent's debt did not prevent devisee from coming into possession and enjoyment of devise within provision of paragraph (f) of this section providing that where beneficiary dies within six months after death of decedent and before coming into the possession and enjoyment of any property, such property shall be taxed only once. *Fisher* v. *District of Columbia* (1948, 164 F. 2d 707, 82 U. S. App. D. C. 371).

Charitable, educational, or religious purposes

A transfer by will to a nonresident educational institution of sum of $100,000, to use net income for payment of tuition and related fees for study at a university located in Washington, D. C., for doctoral degrees by as large a number of predoctoral fellows of nonresident educational institution as such income would permit was exempt from taxation under the inheritance and estate tax provisions as property transferred exclusively for educational purposes within District of Columbia. *District of Columbia* v. *University of Notre Dame etc.* (1957, 246 F. 2d 697, 101 U. S. App. D. C. 10).

Where will left property in trust for distribution of income and finally the principal to such worthy charity or charities in the District of Columbia as trustees in their own discretion might select, such property was transferred exclusively for charitable, educational, or religious purposes within the District of Columbia and was therefore exempt from District of Columbia inheritance tax. *District of Columbia* v. *Castiello, etc.* (1956, 230 F. 2d 839, 97 U. S. App. D. C. 289).

Conclusiveness of findings

In proceeding for review of decision of District of Columbia Board of Tax Appeals that decedent died domiciled in District of Columbia so as to subject his property to inheritance taxes imposed by District of Columbia Code, and that decedent had not retained domicile in state from which he had come to District of Columbia to work for the Government, findings of Board were required to be accepted when not clearly wrong. *Weitknecht* v. *District of Columbia* (1952, 195 F. 2d 570, 90 U. S. App. D. C. 291, certiorari denied 73 S. Ct. 47, 344 U. S. 837, 97 L. Ed. 651).

Contemplation of death

Advanced age alone does not establish contemplation of death for inheritance tax purposes. *District of Columbia* v. *Fadeley et al.* (1956, 233 F. 2d 667, 98 U. S. App. D. C. 176, certiorari denied 77 S. Ct. 64, 352 U. S. 847, 1 L. Ed. 2d 57).

Where agreement between decedent and other partners for transfer of decedent's partnership interest was such that decedent alone was to have fixed percentage of partnership profits, and others assumed certain calculated risks, agreement was not without valuable consideration for inheritance tax purposes. *Id.*

Evidence justified finding that action of a settlor, three months before death of settlor, in renouncing a retained right to income from trust property, was in contemplation of death so that trust property was properly included in settlor's gross estate for inheritance taxation. *Heller* v. *District of Columbia* (1952, 198 F. 2d 983, 91 U. S. App. D. C. 238).

Evidence justified finding of Board of Tax Appeals for District of Columbia that a conveyance of realty made by decedent less than two years before death of decedent, and a transfer of promissory note receivable which decedent made less than two years before her death, were made in contemplation of death so as to subject them to inheritance tax. *Id.*

Construction

The sections of this chapter forming complementary parts of death tax plan for the District of Columbia must be construed together. *District of Columbia* v. *Safe Deposit & Trust Co. of Baltimore* (1941, 116 F. 2d 21, 72 App. D. C. 197).

Domicile

In determining whether federal employee was, at time of his death, legally domiciled in Florida or in District of Columbia which sought to impose inheritance tax, court could review legal effect attached to evidence before board of tax appeals since a domiciliary determination involves a compound consideration of fact and law. *Pace* v. *District of Columbia* (1943, 135 F. 2d 249, 77 U. S. App. D. C. 332, affirmed 64 S. Ct. 406, 320 U. S. 698, 88 L. Ed. 408).

Where district court, sitting in probate, concluded that federal employee died a resident of Florida and ordered his will transmitted to clerk of appropriate court in that state and a few weeks later granted ancillary letters testamentary, such orders were entitled to weight but were not conclusive on question whether the federal employee was domiciled in the District of Columbia so as to permit the District to impose an inheritance tax. *Id.*

Evidence

Evidence sustained finding that a decedent who had come to District of Columbia for position in Government, and who remained in district until his death several years after he lost his Government position, did not have a fixed and definite intent to return to his original home

after he lost his Government position, and that consequently decedent died domiciled in District of Columbia so as to subject his property to inheritance taxes imposed by District of Columbia Code. *Weitknecht* v. *District of Columbia* (1952, 195 F. 2d 570, 90 U. S. App. D. C. 291, certiorari denied 73 S. Ct. 47, 344 U. S. 837, 97 L. Ed. 651).

Evidence established that federal employee who died after 27 years of official service in District of Columbia was legally domiciled in Florida, his domicile of origin, at time of his death, and therefore petitioner was not subject to the District of Columbia inheritance tax. *Pace* v. *District of Columbia* (1943, 135 F. 2d 249, 77 U. S. App. D. C. 332, affirmed 64 S. Ct. 406, 320 U. S. 698, 88 L. Ed. 408).

General power of appointment

Where irrevocable trust instrument, which provided for distribution of remainder of corpus to income beneficiary at age 45, gave beneficiary general power of appointment, but provided that in default of appointment undistributed corpus should be transferred to persons who would be entitled to distribution of beneficiary's personal estate as of date of his death, and beneficiary executed, under seal, an instrument releasing all power of appointment and died before reaching 45, value of corpus passing on death of beneficiary was not subject to inheritance tax. *District of Columbia* v. *Lloyd* (1947, 160 F. 2d 581, 82 U. S. App. D. C. 70).

Where during her lifetime, the beneficiary received the income from a trust without restriction upon its use, with principal held in trust so that she could not encumber or dispose of it even if there had been no restrictive provisions and where by will she could dispose of principal to those whom she might direct, she possessed a general power of appointment subject to taxation. *Lane* v. *District of Columbia* (1950, 182 F. 2d 105, 86 U. S. App. D. C. 337).

Jointly owned property

Statute subjected to inheritance tax one half of value of shares of stock, which first sister had purchased with her own funds, and which first sister had registered jointly in names of herself and of second sister, with right of survivorship, on death of second sister. *P. McKimmey* v. *District of Columbia* (1962, 300 F. 2d 724, 112 U.S. App. D.C. 132).

Life interest

In District of Columbia inheritance tax proceeding, evidence sustained finding of the Tax Court that taxpayer who advanced money to brother for purchase of bonds, had intended to make gift of only life interest in such bonds, reserving remainder to herself, and that when bonds had passed to taxpayer upon death of brother there had been no transfer of any "interest" in bonds within this chapter. *District of Columbia* v. *Wilson* (1954, 216 F. 2d 630, 94 U. S. App. D. C. 399).

A life interest or contingent remainder held by decedent, if created by another, is considered to terminate at death and is not transferable interest within this chapter. *Id.*

Ownership of property

In determining whether there has been taxable transfer within this chapter, concern is with real ownership of property rather than with refinements of title. *District of Columbia* v. *Wilson* (1954, 216 F. 2d 630, 94 U. S. App. D. C. 399).

Payment in lieu of support

A transfer in lieu of husband's obligation to support his first wife during their joint lives, or until her remarriage, was made for adequate and full consideration in money or money's worth, and if lump-sum payment made by executrix to first wife pursuant to property settlement agreement was in lieu of support obligation, it was not subject to a transfer tax. *District of Columbia* v. *F. C. Lewis etc.* (1961, 288 F. 2d 137, 109 U.S. App. D.C. 353).

Purchase for consideration

Where contract between stockholders provided that minority stockholders would surrender their stock to a trustee together with insurance policies on their lives, the proceeds of which would be payable to their wives in event of death and would constitute payment of the stock, which would then be returned to corporation and reissued, majority stockholder having power to terminate contract at any time, and minority stockholders had paid their own insurance premiums, additional stock so acquired by majority stockholder was not exempt from inheritance tax as having been acquired by bona fide purchaser for full "consideration in money or money's worth". *O'Connor* v. *District of Columbia* (1946, 153 F. 2d 225, 80 U. S. App. D. C. 351).

Record on appeal

Record on appeal from assessment of District of Columbia inheritance tax sustained Tax Court's finding that gifts to two grandsons were based on life motives and were not made in contemplation of death. *District of Columbia* v. *Fadeley et al.* (1956, 233 F. 2d 667, 98 U. S. App. D. C. 176, certiorari denied 77 S. Ct. 64, 352 U. S. 847, 1 L. Ed. 2d 57).

Remainder interest

Where testamentary trustee was authorized to invade corpus to meet reasonable needs of beneficiaries in their respective stations of life, including emergencies and protracted illness, taking into account funds otherwise available to them, and to be liberal in so doing, there was standard under which fair estimate could be made of market value of interests which remaindermen would take in determining their liabilty for inheritance taxes, and evidence of wages, life expectancies, health, accustomed scale of living, economic circumstances and other sources of income of beneficiaries as of date of death would permit reasonable measurement of possibility of invasion. *McCeney et al.* v. *District of Columbia* (1956, 230 F. 2d 832, 97 U. S. App. D. C. 282).

This chapter providing that remaindermen under testamentary trust are liable for inheritance tax only on market value of remainder interest required that market value be at least approximated as closely as possible in light of all available facts. *Id.*

This chapter providing that remaindermen under testamentary trust are to pay inheritance tax only on market value of remainder interests as determined in accordance with regulations require that actual market value of interest be determined as nearly as possible, and regulation providing that where corpus may be invaded on behalf of donee for life or for years, taxable value of interest of donee shall be value of entire corpus, was inconsistent with statutes and objectionable in not permitting facts bearing on likelihood of invasion and on market values of life and remainder interests to be considered. *Id.*

Review

In proceeding by bank against District of Columbia for review of decision of Board of Tax Appeals, decision of board that bank, which was paying interest to its depositors, was required to pay gross earnings tax for years 1946 and 1947 although bank sold its assets, ceased business and went into voluntary liquidation on November 30, 1946, was affirmed by the Court of Appeals in banc by an equally divided court. *Columbia National Bank of Washington* v. *District of Columbia* (1952, 195 F. 2d 942, 89 U. S. App. D. C. 224).

Testamentary transfers

Where taxpayer and his housekeeper had entered into agreement whereby he bought and paid for house but title was taken in her name, and, pursuant to agreement that house should belong to survivor upon death of other, housekeeper had willed house to taxpayer, transfer of house to taxpayer at death of his housekeeper was subject to tax under this section taxing all property transferred from any person who may die, seized or possessed thereof, either by will, or by law, or by right of survivorship. *Slyder* v. *District of Columbia* (1951, 187 F. 2d 217, 88 U. S. App. D. C. 170).

Where contract between stockholders provided that minority stockholders would surrender their stock to a trustee together with insurance policies on their lives, the proceeds of which would be paid to the wives of minority stockholders upon death and would constitute payment for the stock, which was then to be returned to the corporation and reissued, additional stock so acquired by majority stockholder was not acquired by an inter

vivos transfer, but by a transfer testamentary in character and was subject to inheritance tax. *O'Connor* v. *District of Columbia* (1946, 153 F. 2d 225, 80 U. S. App. D. C. 351).

§ 47–1602. Tax based on market value—Appraisal.

The tax provided in section 47–1601 shall be paid on the market value of the property or interest therein at the time of the death of the decedent as appraised by the assessor or, in the discretion of the assessor, upon the value as appraised by the probate court of the District. The taxable portion of real or personal property held jointly or by the entireties shall be determined by dividing the value of the entire property by the number of persons in whose joint names it was held. (Aug. 17, 1937, 50 Stat. 683, ch. 690, title V, Art. I, § 2; July 26, 1939, 53 Stat. 1112, ch. 367, title V, § 1.)

AMENDMENT

1939—Act July 26, 1939, deleted the words "of the District of Columbia" following the word "assessor" the first time said word appears.

NOTES TO DECISIONS

Burden of establishing market value

A remainder interest under a trust, under applicable regulation, in absence of evidence relating to value filed with assessor, would not be deemed to establish a presumption conclusive in the Tax Court that such remainder was without value, but under such regulation remainderman had burden of introducing such evidence as would enable Tax Court to find market value of remainder was less than figure on which tax was assessed, but in view of remainderman's misinterpretation of such regulation, decision denying him relief would be set aside and remanded to permit remainderman to introduce evidence of market value. *The Alabama Polytechnic Institute* v. *District of Columbia* (1958, 250 F. 2d 408, 102 U. S. App. D. C. 83).

Foreign corporations

Where Delaware Corporation doing a title insurance business has its principal and sales office in the District, keeps all its corporate records in the District office, and concedes it transacts all its business in the District, it is subject to the District tax on gross receipts in the District. It is immaterial that its business related entirely to Maryland land. *Suburban Title & Investment Corp.* v. *District of Columbia* (1950, 180 F. 2d 387, 86 U. S. App. D. C. 112).

Jointly owned property

Statute subjected to inheritance tax one half of value of shares of stock, which first sister had purchased with her own funds, and which first sister had registered jointly in names of herself and of second sister, with right of survivorship, on death of second sister. *P. McKimmey* v. *District of Columbia* (1962, 300 F. 2d 724, 112 U.S. App. D.C. 132).

Law governing

Where sections 47–704 to 47–709 provided for annual assessment of real estate in District of Columbia and that annual valuation of real estate should constitute basis of taxation for next succeeding year, and this section provided that inheritance tax should be paid on market value of property or interest therein at time of the death of deceased as appraised by assessor and that appraisal should be taken as true value of property or interest therein, market value of property or interest as determined by appraiser controlled and not annual valuation placed upon property for purposes of property tax. *Fisher* v. *District of Columbia* (1948, 164 F. 2d 707, 82 U. S. App. D. C. 371).

Market value of remainder interest

Where testamentary trustee was authorized to invade corpus to meet reasonable needs of beneficiaries in their respective stations of life, including emergencies and protracted illness, taking into account funds otherwise available to them, and to be liberal in so doing, there was standard under which fair estimate could be made of market value of interests which remaindermen would take in determining their liability for inheritance taxes, and evidence of wages, life expectancies, health, accustomed scale of living, economic circumstances and other sources of income of beneficiaries as of date of death would permit reasonable measurement of possibility of invasion. *McCeney et al.* v. *District of Columbia* (1956, 230 F. 2d 832, 97 U. S. App. D. C. 282).

This chapter providing that remaindermen under testamentary trust are liable for inheritance tax only on market value of remainder interest required that maket value be at least appoximateld as closely as possible in light of all available facts. *Id.*

This chapter providing that remaindermen under testamentary trust are to pay inheritance tax only on market value of remainder interests as determined in accordance with regulations require that actual market value of interest be determined as nearly as possible, and regulation providing that where corpus may be invaded on behalf of donee for life or for years, taxable value of interest of donee shall be value of entire corpus, was inconsistent with statutes and objectionable in not permitting facts bearing on likelihood of invasion and on market values of life and remainder interests to be considered. *Id.*

§ 47–1603. Appraisal deemed true value—Tax to be lien—Exceptions.

The appraisal thus made shall be deemed and taken to be the true value of the said property or interest therein upon which the said tax shall be paid, and the amount of said tax and the tax imposed by sections 47–1608 to 47–1615 shall be a lien on said property or interest therein for the period of ten years from the date of death of the decedent: *Provided, however,* That such lien shall not attach to any personal property sold or disposed of for value by an administrator, executor, or collector, of the estate of such decedent appointed by the United States District Court for the District of Columbia or by a trustee appointed under a will filed with the register of wills for the District or by order of said court, or his successor approved by said court, but a lien for said taxes shall attach on all property acquired in substitution therefor for a period of ten years after the acquisition of such substituted property: *And provided further,* That such lien upon such substituted property shall, upon sale by such personal representatives, be extinguished and shall reattach in the manner as provided with respect of such original property. (Aug. 17, 1937, 50 Stat. 684, ch. 690, title V, Art. I, § 3; May 16, 1938, 52 Stat. 361, ch. 223, § 5 (b); July 26, 1939, 53 Stat. 1113, ch. 367, title V, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENTS

1939—Act July 26, 1939, substituted "register of wills for the District" for "register of wills of the District of Columbia."

1938—Act May 16, 1938, inserted the two proviso clauses relating to attachment and extinguishment of liens.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment of section by act May 16, 1938, effective at 12:01 ante meridian on May 17, 1938, see section 5(h) of act May 16, 1938, set out as a note under § 47–1601.

§ 47–1604. Report by decedent's personal representative—Contents—Payment.

The personal representative of every decedent, the gross value of whose estate is in excess of $1,000 shall, within fifteen months after the death of the decedent, report under oath to the assessor, on forms provided for that purpose an itemized schedule of all the property (real, personal, and mixed) of the decedent, the market value thereof at the time of the death of the decedent, the name or names of the persons to receive the same and the actual value of the property that each will receive, the relationship of such persons to the decedent, and the age of any persons who receive a life interest in the property, and any other information which the assessor may require. Said personal representative shall, within eighteen months of the date of the death of the decedent and before distribution of the estate, pay to the collector of taxes the taxes imposed by section 47–1601 upon the distributive shares and legacies in his hands and the tax imposed by section 47–1601 against each distributive share or legacy shall be charged against such distributive share or legacy unless the will shall otherwise direct. (Aug. 17, 1937, 50 Stat. 684, ch. 690, title V, Art. I, § 4; July 26, 1939, 53 Stat. 1113, ch. 367, title V, § 1.)

AMENDMENT

1939—Act July 26, 1939, added the word "gross" before the word "value" the first time said word appears, and deleted the words "of the District of Columbia" following the words "collector of taxes."

NOTES TO DECISIONS

Burden of establishing market value

A remainder interest under a trust, under applicable regulation, in absence of evidence relating to value filed with assessor, would not be deemed to establish a presumption conclusive in the Tax Court, that such remainder was without value, but under such regulation remainderman had burden of introducing such evidence as would enable Tax Court to find market value of remainder was less than figure on which tax was assessed, but in view of remainderman's misinterpretation of such regulation, decision denying him relief would be set aside and remanded to permit remainderman to introduce evidence of market value. *The Alabama Polytechnic Institute* v. *District of Columbia* (1958, 250 F. 2d 408, 102 U. S. App. D. C. 83).

Construction

There is no conflict between this section and 47–2403; they are merely alternative. *Rynex* v. *District of Columbia* (1940, 114 F. 2d 842, 72 App. D. C. 386).

Time of payment

Section 47–2403 requires payment of the tax within 90 days after receipt of assessment as a condition precedent to the taking of an appeal although this due date falls before the end of the eighteen months provision of this section. *Rynex* v. *District of Columbia* (1940, 114 F. 2d 842, 72 App. D. C. 386).

§ 47–1605. Collection of tax from distributive share.

The personal representative of the decedent shall collect from each beneficiary entitled to a distributive share or legacy the tax imposed upon such distributive share or legacy in section 47–1601, and if the said beneficiary shall neglect or fail to pay the same within fifteen months after the date of the death of the decedent such personal representative shall, upon the order of the United States District Court for the District of Columbia, sell for cash so much of said distributive share or legacy as may be necessary to pay said tax and all the expenses of said sale. (Aug. 17, 1937, 50 Stat. 685, ch. 690, title V, Art. I, § 5; July 26, 1939, 53 Stat. 1113, ch. 367, title V, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1939—Act July 26, 1939, reenacted section without change.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 47–1606. Property not under control of personal representative.

Every person entitled to receive property taxable under section 47–1601, which property is not under the control of a personal representative, and is over $1,000 in value, shall, within six months after the death of the decedent, report under oath to the assessor, on forms provided for that purpose an itemized schedule of all property (real, personal, and mixed) received or to be received by such person; the market value of the same at the time of the death of the decedent and the relationship of such person to the decedent; and any other information which the assessor may require. The tax on the transfer of any such property shall be paid by such person to the collector of taxes within nine months after the date of the death of the decedent: *Provided, however,* That with respect to real estate passing by will or inheritance such report shall be made within fifteen months after the death of the decedent, and the tax on the transfer thereof shall be paid within eighteen months after the date of the death of the decedent. (Aug. 17, 1937, 50 Stat. 685, ch. 690, title V, Art. I, § 6, formerly § 7; May 16, 1938, 52 Stat. 361, ch. 223, § 5(c); renumbered July 26, 1939, 53 Stat. 1113, ch. 367, title V, § 1.)

AMENDMENTS

1939—Act July 26, 1939, reenacted section without change.

1938—Act May 16, 1938, inserted the proviso clause.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment of section by act May 16, 1938, effective at 12:01 ante meridian on May 17, 1938, see section 5(h) of act May 16, 1938, set out as a note under § 47–1601.

§ 47–1607. Life and future estates—Payment of tax—Lien.

In the case of any grant, deed, devise, descent, or bequest of a life interest or term of years, the donee for life or years shall pay a tax only on the value of his interest, determined in a manner as the Commissioners by regulation may prescribe, and the donee of the future interest shall pay a tax only on his interest as based upon the value thereof at the time of the death of the decedent creating such interest. The value of any future interest shall be determined by deducting from the market value of such property at the time of the death of such decedent the value of the precedent life interest or term of years. Where the future interest is vested the donee thereof shall pay the tax within the time in which the tax upon the precedent life interest or term of years is required to be paid under the provisions of sections 47–1604 and 47–1606, as the case may be.

Where the future interest is contingent the personal representative of such decedent or the persons interested in such contingent future estate shall have the option of (1) paying, within the time herein provided for the payment of taxes due upon vested future interests, a tax equal to the mean between the highest possible tax and the lowest possible tax which could be imposed under any contingency or condition whereby such contingent future interest might be wholly or in part created, defeated, extended, or abridged; or (2) paying the tax upon such transfer at the time when such future interest shall become vested at rates and with exemptions in force at the time of the death of the decedent: *Provided,* That the personal representative or trustee of the estate of the decedent or the persons interested in the future contingent interest shall deposit with the assessor a bond in the penal sum of an amount equal to twice the tax payable under option (1) hereof. Such bonds shall be payable to the District and shall be conditioned for the payment of such tax when and as the same shall become due and payable. The tax upon the transfer of future interests or remainders shall be a lien upon the property or interest transferred from the date of the death of the decedent creating the interests and shall remain in force and effect until ten years after the date when such remainder or future interest shall become vested in the donee thereof. If the tax upon the transfer of a contingent future interest is paid before the same shall become vested, such tax shall be paid by the personal representative out of the corpus of the estate of the decedent, otherwise by the person or persons entitled to receive the same. (Aug. 17, 1937, 50 Stat. 686, ch. 690, title V, Art. I, § 7, formerly § 10; May 16, 1938, 52 Stat. 361, ch. 223, § 5(d), renumbered and amended July 26, 1939, 53 Stat. 1114, ch. 367, title V, § 1.)

AMENDMENTS

1939—Act July 26, 1939, deleted the word "such" and inserted in lieu thereof the word "the" before the word "decedent" immediately before the proviso and deleted the words "of Columbia" following the word "District"

1938—Act May 16, 1938, amended section generally. Prior to such amendment, section read as follows: "In the case of any grant, deed, devise, descent, or bequest of a life interest or term of years, the donee for life or years shall pay a tax only on the value of his interest, and the donee of the future interest shall pay his tax when his right of possession or enjoyment accrues. In the case of a devise, descent, bequest, or grant to take effect in possession or enjoyment after the expiration of one or more life estates or of a term of years, the tax shall be assessed on the value of the property or interest therein coming to the beneficiary at the time when he becomes entitled to the same in possession or enjoyment. Said tax shall be a lien for the period of ten years on the property or interest therein from the date when said beneficiary becomes entitled to the same in possession or enjoyment."

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment of section by act May 16, 1938, effective at 12:01 ante meridian on May 17, 1938, see section 5(h) of act May 16, 1938, set out as a note under § 47–1601.

CROSS REFERENCE

Rules and regulations, see § 47–2502.

NOTES TO DECISIONS

Character of interest

The critical date for the determination of the character of a vested interest is the date of the deceased's death. *District of Columbia* v. *Clark* (1949, 175 F. 2d 821, 84 U. S. App. D. C. 88).

Market value of remainder interest

Where testamentary trustee was authorized to invade corpus to meet reasonable needs of beneficiaries in their respective stations of life, including emergencies and protracted illness, taking into account funds otherwise available to them, and to be liberal in so doing, there was standard under which fair estimate could be made of market value of interests which remaindermen would take in determining their liability for inheritance taxes, and evidence of wages, life expectancies, health, accustomed scale of living, economic circumstances and other sources of income of beneficiaries as of date of death would permit reasonable measurement of possibility of invasion. *McCeney et al* v. *District of Columbia* (1956, 230 F. 2d 832, 97 U. S. App. D. C. 282).

This chapter providing that remaindermen under testamentary trust are liable for inheritance tax only on market value of remainder interest required that market value be at least approximated as closely as possible in light of all available facts. *Id.*

This chapter providing that remaindermen under testamentary trust are to pay inheritance tax only on market value of remainder interests as determined in accordance with regulations require that actual market value of interest be determined as nearly as possible, and regulation providing that where corpus may be invaded on behalf of donee for life or for years, taxable value of interest of donee shall be value of entire corpus, was inconsistent with statutes and objectionable in not permitting facts bearing on likelihood of invasion and on market values of life and remainder interests to be considered. *Id.*

Remainder interests

Under the statutory definition of vested interests, the interests herein presented were vested remainders, while at the same time, the remainder interests were subject to be divested should the remaindermen, or any of them, fail to survive the life estate, and as such were subject to taxation. *Keep* v. *District of Columbia* (1950, 181 F. 2d 789, 86 U. S. App. D. C. 206).

Vested and contingent interests

Where grantor devised residue to widow in trust and provided that upon her death or remarriage the residue was to be divided among the children until they reached thirty-seven, such estates were vested for the purposes of taxation. *District of Columbia* v. *Clark* (1949, 175 F. 2d 821, 84 U. S. App. D. C. 88).

Where the characteristics of a vested interest and a contingent interest had been firmly established in District of Columbia by repeated court decisions and by statutory enactment, Congress in using terms "vested" and "contingent" in this section distinguishing between a vested interest and a contingent interest and providing a different method of taxation for each without defining such terms, recognized as valid for tax purposes, the well established distinction between those two classes of estates. *O'Neill* v. *District of Columbia* (1943, 132 F. 2d 601, 77 U. S. App. D. C. 79).

Where testator devised his residuary estate to his wife for life and on her death to testator's daughters in fee simple share and share alike and "in the event that either of them be then dead unto the survivor of them", the daughters acquired a "vested interest" and not a "contingent interest" within this section which recognizes and taxes separately vested interest and contingent interest. *Id.*

ARTICLE II—ESTATE TAX

§ 47-1608. Imposition of tax—Additional levy on transfers.

In addition to the taxes imposed by sections 47-1601 to 47–1607, there is hereby imposed upon the transfer of the estate of every decedent who, after August 18, 1937, shall die a resident of the District, a tax equal to eighty per centum of the Federal estate tax imposed by section 301, title III, of the Revenue Act of 1926, as amended, or as hereafter

amended or reenacted. (Aug. 17, 1937, 50 Stat. 687, ch. 690, title V, art. II, § 1, formerly § 18, renumbered and amended July 26, 1939, 53 Stat. 1114, ch. 367, title V, § 1.)

REFERENCES IN TEXT

Section 301, title III, of the Revenue Act of 1926, referred to in the text, is now covered by section 2001 et seq. of the Internal Revenue Code of 1954. See 26 U.S.C. § 2001 et seq.

AMENDMENT

1939—Act July 26, 1939, deleted the words "of Columbia" following the word "District."

EFFECTIVE DATE

Chapter effective at 12:01 antemeridian, the day immediately following Aug. 17, 1937, see section 14 of Article III of title V of act Aug. 17, 1937, set out as a note under § 47–1601.

CROSS REFERENCES

Situs of intangibles, see § 47–1629.

Tax imposed by §§ 47–1608 to 47–1615 as lien for 10 years from death of decedent, see § 47–1603.

Transfer tax on property of nonresidents, see § 47–1612 et seq.

NOTES TO DECISIONS

Amount of tax

Under sections of this chapter providing unified system of death taxes for the District of Columbia, amount payable to District as estate tax was not 80 percent of the Federal estate tax, but was merely the difference between that amount and the inheritance tax which had been paid to the District on account of the same estate. *District of Columbia* v. *Safe Deposit & Trust Co. of Baltimore* (1941, 116 F. 2d 21, 72 App. D. C. 197).

§ 47–1609. Credits—Restriction.

There shall be credited against and applied in reduction of the tax imposed by section 47–1608 the amount of any estate, inheritance, legacy, or succession tax lawfully imposed by any State or Territory of the United States, in respect of any property included in the gross estate for Federal estate tax purposes as prescribed in title III of the Revenue Act of 1926, as amended, or as hereafter amended or reenacted: *Provided, however,* That only such taxes as are actually paid and which are proper allowances against the Federal estate tax may be applied as a credit against and in reduction of the tax imposed by section 47–1608. (Aug. 17, 1937, 50 Stat. 687, ch. 690, title V, art II, § 2, formerly § 19, renumbered and amended July 26, 1939, 53 Stat. 1114, ch. 367, title V, § 1; Feb. 2, 1942, 56 Stat. 46, ch. 33, § 3 (a).)

REFERENCES IN TEXT

Title III of the Revenue Act of 1926, referred to in the text, is now covered by section 2001 et seq. of the Internal Revenue Code of 1954. See 26 U.S.C. § 2001 et seq.

AMENDMENTS

1942—Act Feb. 2, 1942, amended section by substituting words "which are proper allowances" for words "credit therefor claimed and allowed" in the proviso.

1939—Act July 26, 1939, substituted "imposed by section 1 of this article" for "imposed by section 18 of this title", and "section 1" for "section 18", which for purposes of codification have been translated to "section 47–1608."

§ 47–1610. Not to exceed difference between maximum credit and levy by States.

In no event shall the tax imposed by section 47–1608 exceed the difference between the maximum credit which might be allowed against the Federal estate tax imposed by title III of the Revenue Act of 1926, as amended, or as hereafter amended or re-enacted, and the aggregate amount of the taxes described in section 47–1609 (but not including the tax imposed by section 47–1608) allowable as a credit against the Federal estate tax. (Aug. 17, 1937, 50 Stat. 687, ch. 690, title V, art. II, § 3, formerly § 20, renumbered and amended July 26, 1939, 53 Stat. 1114, ch. 367, title V, § 1.)

REFERENCES IN TEXT

Title III of the Revenue Act of 1926, referred to in the text, is now covered by section 2001 et seq. of the Internal Revenue Code of 1954. See 26 U.S.C. § 2001 et seq.

AMENDMENT

1939—Act July 26, 1939, substituted "section 1" for "section 18" and "section 2" for "section 19", which for purposes of codification have been translated to "section 47–1608" and "section 47–1609", respectively.

§ 47–1611. Benefits to District.

The purpose of section 47–1608 is to secure for the District the benefit of the credit allowed under the provisions of section 301(c) of title III of the Revenue Act of 1926, as amended, or as hereafter amended or re-enacted, to the extent that the District may be entitled by the provisions of said Revenue Act, by imposing additional taxes, and the same shall be liberally construed to effect such purpose: *Provided,* That the amount of the tax imposed by section 47–1608 shall not be decreased by any failure to secure the allowance of credit against the Federal estate tax. (Aug. 17, 1937, 50 Stat. 687, ch. 690, title V, art. II, § 4, formerly § 21, renumbered and amended July 26, 1939, 53 Stat. 1115, ch. 367, title V, § 1.)

REFERENCES IN TEXT

Section 301(c) of title III of the Revenue Act of 1926, referred to in the text, is now covered by section 2011 et seq. of the Internal Revenue Code of 1954. See 26 U.S.C. § 2011 et seq.

AMENDMENT

1939—Act July 26, 1939, deleted the words "of Columbia" following the word "District" both times it appears.

§ 47–1612. Tax on transfer of nonresidents' real and personal property.

A tax is hereby imposed upon the transfer of real property or tangible personal property in the District of every person who at the time of death was a resident of the United States but not a resident of the District, and upon the transfer of all property, both real and personal, within the District of every person who at the time of death was not a resident of the United States, the amount of which shall be a sum equal to such proportion of the amount by which the credit allowable under the applicable Federal Revenue Act for estate, inheritance, legacy, and succession taxes actually paid to the several States exceeds the amount actually so paid for such taxes, exclusive of estate taxes based upon the difference between such credit and other estate taxes and inheritance, legacy, and succession taxes, as the value of the property in the District bears to the value of the entire estate, subject to estate tax under the applicable Federal Revenue Act. (Aug. 17, 1937, ch. 690, title V, Art. II, § 5, formerly § 27, as added May 16, 1938, 52 Stat. 363, ch. 223, § 5 (g), and renumbered and amended July 26, 1939, 53 Stat. 1115, ch. 367, title V, § 1.)

AMENDMENT

1939—Act July 26, 1939, deleted the words "of Columbia" following the word "District" each time it appears.

EFFECTIVE DATE

Section effective at 12:01 ante meridian on May 17, 1938, see section 5(h) of act May 16, 1938, set out as a note under § 47–1601.

CROSS REFERENCE

Situs of intangibles, see § 47–1629.

§ 47–1613. Executor to file copy of Federal return with assessor.

Every executor or administrator of the estate of a decedent dying a resident of the District or of a nonresident decedent owning real estate or tangible personal property situated in the District, or of an alien decedent owning any real estate, tangible or intangible personal property situated in the District, or, if there is no executor or administrator appointed, qualified, and acting, then any person in actual or constructive possession of any property forming a part of an estate subject to estate tax under this chapter shall, within sixteen months after the death of the decedent file with the assessor a copy of the return required by section 304 of the Revenue Act of 1926, verified by the affidavit of the person filing said return with the assessor, and shall, within thirty days after the date of any communication from the Commissioner of Internal Revenue, confirming, increasing, or diminishing the tax shown to be due, file a copy of such communication with the assessor. With the copy of the Federal estate tax return there shall be filed an affidavit as to the several amounts paid or expected to be paid as taxes within the purview of section 47–1609: *Provided, however,* That in any case where the time for the filing of such return as required by section 304 of the Revenue Act of 1926 is extended without penalty by the Bureau of Internal Revenue, then the copy thereof verified as aforesaid may be filed with the assessor within thirty days after the expiration of said extended period. (Aug. 17, 1937, 50 Stat. 688, ch. 690, title V, Art. II, § 6, formerly § 22, renumbered and amended July 26, 1939, 53 Stat. 1115, ch. 367, title V, § 1.)

REFERENCES IN TEXT

Section 304 of the Revenue Act of 1926, referred to in the text, is now covered by section 6018 of the Internal Revenue Code of 1954. See 26 U.S.C. § 6018.

AMENDMENT

1939—Act July 26, 1939, amended section generally. Prior to such amendement, section read as follows: "Every executor or administrator of a decedent dying a resident of the District of Columbia or, if there is no executor or administrator appointed, qualified, and acting within the District of Columbia, then any person in actual or constructive possession of any property forming part of the gross estate of the decedent for Federal estate-tax purposes shall, within thirty days of the filing of the return for Federal estate-tax purposes required by section 304 of the Revenue Act of 1926, file with the assessor for the District of Columbia a copy, verified by the affidavit of the person filing the return with the assessor, of such Federal estate-tax return and shall, within thirty days after the date of any communication from the Commissioner of Internal Revenue, confirming, increasing, or diminishing the tax shown to be due, file a copy of such communication with the assessor. With the copy of the Federal estate-tax return there shall be filed an affidavit as to the several amounts paid or expected to be paid as taxes within the purview of section 19 hereof."

CHANGE OF NAME

The official title of the Bureau of Internal Revenue was changed to the Internal Revenue Service by Treas. Dept. Order 150–29, eff. July 9, 1953.

§ 47–1614. Assessment on basis of return.

The assessor shall, upon receipt of the return and accompanying affidavit, assess such amount as he may determine, from the basis of the return, to be due the District. Upon receipt of a copy of any communication from the Commissioner of Internal Revenue, herein required to be filed, the assessor shall make such additional assessment or shall make such abatement of the assessment as may appear proper (Aug. 17, 1937, 50 Stat. 688, ch. 690, title V, Art. II, § 7, formerly § 23, renumbered and amended July 26, 1939, 53 Stat. 1115, ch. 367, title V, § 1.)

AMENDMENT

1939—Act July 26, 1939, deleted the words "of the District of Columbia" following the word "assessor" the first time the said word appears, and deleted the words "of Columbia" following the word "District."

§ 47–1615. Tax payable within seventeen months.

The estate taxes imposed by sections 47–1608 to 47–1615 shall be paid to the collector of taxes within seventeen months after the death of the decedent: *Provided, however,* That in any case where the time for the payment of taxes imposed by subdivision (a) of section 301, title III, of the Revenue Act of 1926, is extended by the Bureau of Internal Revenue, then the tax imposed by sections 47–1608 to 47–1615 shall be paid within sixty days after the expiration of such extended period, together with interest as provided in section 47–1619: *Provided further,* That any additional assessment found to be due under section 47–1614 shall be paid to the collector of taxes within thirty days after the determination of such additional assessment by the assessor. (Aug. 17, 1937, 50 Stat. 688, ch. 690, title V, Art. II, § 8, formerly § 24, renumbered and amended July 26, 1939, 53 Stat. 1116, ch. 367, title V, § 1.)

REFERENCES IN TEXT

Subdivision (a) of section 301, title III of the Revenue Act of 1926, referred to in the text, is now covered by section 2001 of the Internal Revenue Code of 1954. See U.S. Code, title 26, § 2001.

AMENDMENT

1939—Act July 26, 1939, amended section generally. Prior to such amendment, section read as follows: "The tax imposed by this article shall be paid to the collector of taxes within thirty days after the determination of said taxes by the assessor of the District of Columbia."

CHANGE OF NAME

The official title of the Bureau of Internal Revenue was changed to the Internal Revenue Service by Treas. Dept. Order 150–29, eff. July 9, 1953.

ARTICLE III—GENERAL

§ 47–1616. Liability of bond for assessments—Limitation.

The bond of the personal representative of the decedent shall be liable for all taxes and penalties assessed under this chapter, except inheritance taxes and penalties imposed in relation to the transfer of property not under the control of such personal representative: *Provided,* That in no case shall the bond of the personal representative be liable for a

greater sum than is actually received by him. (Aug. 17, 1937, 50 Stat. 685, ch. 690, title V, Art. III, § 1, formerly Art. I, § 6, renumbered and amended July 26, 1939, 53 Stat. 1116, ch. 367, title V, § 1.)

AMENDMENT

1939—Act July 26, 1939, added the exception.

§ 47–1617. Monthly report of names of decedents by register of wills.

The register of wills of the District shall report to the assessor on forms provided for the purpose every qualification in the District upon the estate of a decedent. Such report shall be filed with the assessor at least once every month, and shall contain the name of the decedent, the date of his death, the name and address of the personal representative, and the value of the estate, as shown by the petition for administration or probate. (Aug. 17, 1937, 50 Stat. 685, ch. 690, title V, Art. III, § 2, formerly Art. I, § 8, renumbered and amended July 26, 1939, 53 Stat. 1116, ch. 367, title V, § 1.)

AMENDMENT

1939—Act July 26, 1939, deleted the words "of Columbia" following the word "District" both times said word appears.

§ 47–1618. Administration—Rules—Testimony—Production of books and records.

The commissioners shall have supervision of the enforcement of this chapter and shall have the power to make such rules and regulations, consistent with this chapter, as may be necessary for enforcement of this chapter and efficient administration and to provide for the granting of extension of time within which to perform the duties imposed by this chapter. The assessor shall determine all taxes assessable under this chapter, and immediately upon the determination of same, shall forward a statement of the taxes determined to the person or persons chargeable with the payment thereof and shall give advice thereof to the collector of taxes.

The assessor is hereby authorized and empowered to summon any person before him to give testimony on oath or affirmation or to produce all books, records, papers, documents, or other legal evidence as to any matter relating to this chapter and the assessor is authorized to administer oaths and to take testimony for the purposes of the administration of this chapter. Such summons may be served by any member of the Metropolitan police department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then and in that event the assessor may report that fact to the United States District Court for the District of Columbia or one of the judges thereof, and said court or any judge thereof hereby is empowered to compel obedience to said summons to the same extent as witnesses may be compelled to obey the subpenas of that court. (Aug. 17, 1937, 50 Stat. 685, ch. 690, title V, Art. III, § 3, formerly Art. I, § 9, renumbered and amended July 26, 1939, 53 Stat. 1116, ch. 367, title V, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENT

1939—Act July 26, 1939, eliminated references to the members of the Board of Assistant Assessors or the Board of Personal Tax Appeals, and provisions which authorized an appeal to the Board of Personal Tax Appeals.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia," and "judge" and "judges" for "justice" and "justices", respectively.

NOTES TO DECISIONS

Intent of Congress

This chapter manifests a congressional intention to require that such tax be computed on the value of the realty or what the beneficiary actually received, and not the gross value of the realty transferred. *Hyman* v. *District of Columbia* (1957, 247 F. 2d 585, 101 U.S. App. D.C. 179)

Market value of remainder interest

Where testamentary trustee was authorized to invade corpus to meet reasonable needs of beneficiaries in their respective stations of life, including emergencies and protracted illness, taking into account funds otherwise available to them, and to be liberal in so doing, there was standard under which fair estimate could be made of market value of interests which remaindermen would take in determining their liability for inheritance taxes, and evidence of wages, life expectancies, health, accustomed scale of living, economic circumstances and other sources of income of beneficiaries as of date of death would permit reasonable measurement of possibility of invasion. *McCeney et al.* v. *District of Columbia* (1956, 230 F. 2d 832, 97 U. S. App. D. C. 282).

This chapter providing that remaindermen under testamentary trust are liable for inheritance tax only on market value of remainder interest required that market value be at least approximated as closely as possible in light of all available facts. *Id.*

This chapter providing that remandermen under testamentary trust are to pay inheritance tax only on market value of remainder interests as determined in accordance with regualtions require that actual market value of interest be determined as nearly as possible and regulation providing that where corpus may be invaded on behalf of donee for life or for years, taxable value of interest of donee shall be value of entire corpus, was inconsistent with statutes and objectionable in not permitting facts bearing on likelihood of invasion and on market values of life and remainder interests to be considered. *Id.*

Measure of tax on encumbered property

While a tax on inheritance or succession is not a property tax but a duty or excise laid on the privilege of taking property by descent, it is measured by the market value of the transferred property at the time the owner died. *Hyman* v. *District of Columbia* (1957, 247 F. 2d 585, 101 U. S. App. D. C. 179).

Where decedent owed her brother a large sum of money and her will provided that if he had a claim on her realty interest, devise thereof should be "subject to such claim or lien" District of Columbia Inheritance Tax should have been computed not on the gross value of the realty received by the brother, but on the value thereof after the brother's claim thereon had been deducted. *Id.*

Where an unqualified devise transfers legal title, if it is encumbered at the date of death, the then market value of the property transferred is the gross value, less the encumbrance for inheritance tax purposes. *Id.*

Refund of tax

Where estate's claim for refund of District of Columbia estate tax had been denied by assessor, District of Columbia Tax Court should not have dismissed appeal from assessor's ruling, although claim could not be determined until a simultaneous claim for refund of federal estate tax had been decided, but claim should have been placed on Tax Court's reserve calendar, until federal claim had been decided. *Forsberg, estate of* v. *District of Columbia* (1955, 220 F. 2d 197, 95 U. S. App. D. C. 90).

§ 47–1619. Arrears.

If the taxes imposed by this chapter are not paid when due, one-half of 1 per centum interest for each month or portion of a month from the date when the same were due until paid shall be added to the amount of said taxes and collected as a part of the same, and said taxes shall be collected by the collector of taxes in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection. (Aug. 17, 1937, 50 Stat. 686, ch. 690, title V, Art. III, § 4, formerly Art. I, § 11, renumbered and amended July 26, 1939, 53 Stat. 1116, ch. 367, title V, § 1; Feb. 2, 1942, 56 Stat. 47, ch. 33, § 3(c); July 10, 1952, 66 Stat. 543, ch. 649, § 2(a).)

AMENDMENTS

1952—Act July 10, 1952, reduced the interest rate from one percentum to one-half of one per centum for each month or portion of a month, and eliminated provisions which required payment of interest at the rate of six per centum per annum in cases where the time for payment of the tax is extended by the assessor, or where the tax is lawfully suspended, or where the date for payment is extended by the provisions of section 47–1615 beyond seventeen months after the date of death.

1942—Act Feb. 2, 1942, inserted provisions requiring payment of interest at the rate of six per centum per annum in cases where the date for payment of any tax imposed by sections 47–1608 to 47–1615 is extended by the provisions of section 47–1615 beyond seventeen months after the date of death of the decedent.

1939—Act July 26, 1939, inserted provisions requiring the payment of interest at the rate of six per centum per annum in cases where the time for payment of the tax is extended by the assessor or where the payment of the tax is lawfully suspended.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 8 of act July 10, 1952, provided that: "The amendments made by section 2 of this Act [to this section and sections 46–304, 47–1538, 47–1540, 47–1541 and 47–2624] shall be effective July 1, 1952."

§ 47–1620. Enforcement.

If any person shall fail to perform any duty imposed upon him by the provisions of this chapter or the regulations made hereunder the Commissioners may proceed by petition for mandamus to compel performance and upon the granting of such writ the court shall adjudge all costs of such proceeding against the delinquent. (Aug. 17, 1937, 50 Stat. 686, ch. 690, title V, Art. III, § 5, formerly Art. I, § 12, renumbered and amended July 26, 1939, 53 Stat. 1117, ch. 367, title V, § 1.)

AMENDMENT

1939—Act July 26, 1939, deleted the words "of the District of Columbia" following the word "commissioners."

CROSS REFERENCE

Writ of mandamus abolished in the District Court, see Federal Rules of Civil Procedure, Rule 81(b), 28 U.S.C. App.

§ 47–1621. Failure to file return—False return—Penalty.

Any person required by this chapter to file a return who fails to file such return within the time prescribed by this chapter, or within such additional time as may be granted under regulations promulgated by the commissioners, shall become liable in his own person and estate to the District in an amount equal to 10 per centum of the tax found to be due. In case any person required by this chapter to file a return knowingly files a false or fraudulent return, he shall become liable in his own person and estate to the said District in an amount equal to 50 per centum of the tax found to be due. Such amounts shall be collected in the same manner as is herein provided for the collection of the taxes levied under this chapter. (Aug. 17, 1937, 50 Stat. 686, ch. 690, title V, Art. III, § 6, formerly Art. I, § 13; May 16, 1938, 52 Stat. 362, ch. 223, § 5 (e), renumbered and amended July 26, 1939, 53 Stat. 1117, ch. 367, title V, § 1.)

AMENDMENTS

1939—Act July 26, 1939, deleted the words "of the District of Columbia" following the word "Commissioners," and the words "of Columbia" following the word "District."

1938—Act May 16, 1938, substituted "10 per centum of the tax" for "25 per centum of the tax."

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment of section by act May 16, 1938, effective at 12:01 ante meridian on May 17, 1938, see section 5(h) of act May 16, 1938, set out as a note under § 47–1601.

§ 47–1622. Wilful failure to pay taxes, make return—Penalty.

Any person required by this chapter to pay a tax or required by law or regulation made under authority thereof to make a return or keep any records or supply any information for the purposes of computation, assessment, or collection of any tax imposed by this chapter, who wilfully fails to pay such tax, make any such return, or supply any such information at the time or times required by law or regulation shall, in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction thereof be fined not more than $1,000 or imprisoned for not more than one year, or both. (Aug. 17, 1937, 50 Stat. 686, ch. 690, title V, Art. III, § 7, formerly Art. I, § 14, renumbered and amended July 26, 1939, 53 Stat. 1117, ch. 367, title V, § 1.)

AMENDMENT

1939—Act July 26, 1939, reenacted section without change.

§ 47–1623. Release of lien.

When the assessor is satisfied that the tax liability imposed by this chapter has been fully discharged or provided for, he may, under regulations prescribed by the Commissioners, issue his certificate, releasing any or all property from the lien herein imposed by this chapter. (Aug. 17, 1937, 50 Stat. 686, ch. 690, title V, Art. III, § 8, formerly Art. I, § 15 renumbered and amended July 26, 1939, 53 Stat. 1117, ch. 367, title V, § 1.)

AMENDMENT

1939—Act July 26, 1939, deleted the words "of any estate" and inserted in lieu thereof the words "imposed by this chapter" following the word "liability," the words "of said District" following the word "Commissioners," and the words "of such estate" following the word "property."

§ 47–1624. Transfers of assets—Notice—Portion retained to pay tax—Assessor to examine assets—Issuance of certificate.

No person holding, within the District tangible or intangible assets of any resident or nonresident decedent, of the value of $300 or more, shall deliver or transfer the same or any part thereof to any person other than an executor, administrator, or col-

lector of the estate of such decedent appointed by the United States District Court for the District of Columbia, unless notice of the date and place of such intended transfer be served upon the assessor of the District of Columbia at least ten days prior to such delivery or transfer, nor shall any person holding, within the District of Columbia, any assets of a resident or nonresident decedent, of the value of $300 or more, deliver or transfer the same or any part thereof to any person other than an executor, administrator, or collector of the estate of such decedent appointed by said District Court without retaining a sufficient portion or amount thereof to pay any tax which may be assessed on account of the transfer of such assets under the provisions of sections 47–1601 to 47–1624 without an order from the assessor of the District of Columbia authorizing such transfer. It shall be lawful for the assessor of the District, personally, or by his representatives, to examine said assets at any time before such delivery or transfer. Failure to serve such notice or to allow such examination or to retain as herein required a sufficient portion or amount to pay the taxes imposed by this chapter shall render such person liable to the payment of such taxes. The assessor of the District may issue a certificate authorizing the transfer of any such assets whenever it appears to the satisfaction of said assessor that no tax is due thereon: *Provided, however*, That any corporation, foreign or domestic to the District having outstanding stock or other securities registered in the sole name of a decedent whose estate or any part thereof is taxable under this chapter may transfer the same, without notice to the assessor and without liability for any tax imposed thereon under this chapter, upon the order of an administrator, executor, or collector of the estate of such decedent appointed by the United States District Court for the District of Columbia, or by a trustee appointed under a will filed with the register of wills of the District, or appointed by said court, or his successor approved by said court: *Provided further*, That the lessor of a safe-deposit box standing in the joint names of a decedent and a survivor or survivors may deliver the entire contents of such safe-deposit box to the survivor or survivors, after examination of such contents by the assessor or his representative, without any liability on the part of the said lessor for the payment of such tax. (Aug. 17 1937, 50 Stat. 687, ch. 690, title V, Art. III, § 9, formerly Art. I, § 16; May 16, 1938, 52 Stat. 362, ch. 223, § 5 (f), renumbered and amended July 26, 1939, 53 Stat. 1117, ch. 367, title V, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

AMENDMENTS

1939—Act July 26, 1939, added the first proviso, and deleted the words "of Columbia" following the word "District" the first time the said word appears in the first, second, and fourth sentences and added the words "of the value of $300 or more" both times they appear.

1938—Act May 16, 1938, added the second proviso.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment of section by act May 16, 1938, effective at 12:01 ante meridian on May 17, 1938, see section 5(h) of act May 16, 1938, set out as a note under § 47–1601.

§ 47–1625. Bureau of Internal Revenue to supply information to Commissioners.

The Bureau of Internal Revenue of the Treasury Department of the United States is authorized and required to supply such information as may be requested by the Commissioners relative to any person subject to the taxes imposed under this chapter or relative to any person whose estate is subject to the provisions of said sections. (Aug. 17, 1937, ch. 690, title V, Art. III, § 10, formerly Art. II, § 26, as added May 16, 1938, 52 Stat. 363, ch. 223, § 5 (g), and renumbered July 26, 1939, 53 Stat. 1118, ch. 367, title V, § 1.)

CHANGE OF NAME

The official title of the Bureau of Internal Revenue was changed to the Internal Revenue Service by Treas. Dept. Order 150–29, eff. July 9, 1953.

EFFECTIVE DATE

Section effective at 12:01 antemeridian on May 17, 1938, see section 5(h) of act May 16, 1938, set out as a note under § 47–1601.

CROSS REFERENCE

Secrecy of information, see § 47–2504.

§ 47–1626. Assessor to determine tax if return not filed when due.

If any return required by this chapter is not filed with the assessor when due, the assessor shall have the right to determine and assess the tax or taxes from such information as he may possess or obtain. (Aug. 17, 1937, ch. 690, title V, Art. III, § 11, as added July 26, 1939, 53 Stat. 1118, ch. 367, title V, § 1.)

§ 47–1627. Assessor may compound and settle tax.

The assessor is authorized to enter into an agreement with any person liable for a tax on a transfer under sections 47–1601 to 47–1607, in which remainders or expectant estates are of such nature or so disposed and circumstanced that the value of the interest is not ascertainable under the provisions of this chapter, and to compound and settle such tax upon such terms as the assessor may deem equitable and expedient. (Aug. 17, 1937, ch. 690, title V, Art. III, § 12, as added July 26, 1939, 53 Stat. 1118, ch. 367, title V, § 1.)

§ 47–1628. Definitions.

In the interpretation of this chapter unless the context indicates a different meaning the term "tax" means the tax or taxes mentioned in this chapter.

(a) The term "District" means the District of Columbia.

(b) The term "Commissioners" means the Commissioners of the District of Columbia, or their duly authorized representative or representatives.

(c) The term "assessor" means the assessor of the District of Columbia or his duly authorized representative or representatives.

(d) The term "collector of taxes" means the collector of taxes for the District of Columbia, or his duly authorized representative or representatives.

(e) The term "Metropolitan Police Department" means the Metropolitan Police Department of the District of Columbia.

(f) The term "include" when used in a definition contained in this chapter shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(g) The term "resident" means domiciled and the term "residence" means domicil. (Aug. 17, 1937, 50 Stat. 687, ch. 690, title V, Art. III, § 13, formerly Art. I, § 17, renumbered and amended July 26, 1939, 53 Stat. 1118, ch. 367, title V, § 1.)

AMENDMENT

1939—Act July 26, 1939, amended section generally. Prior to such amendment, section read as follows: "The word 'person' when used in this title shall include individuals, partnerships, associations, and corporations."

§ 47–1629. Situs of intangibles—Trust estates—Aliens.

Credits, securities, and other intangible personal property within the District not employed in carrying on any business therein by the owner shall be deemed to be located at the domicil of the owner for purposes of taxation under this chapter, and, if held in trust, shall not be deemed to be located in the District for purposes of taxation under this chapter solely because of the trustee being domiciled in the District: *Provided further,* That this section shall not apply to property owned by alien decedents, and that nothing herein contained shall affect the taxation by the District of any property owned by alien decedents which, at the time of the death of such decedents, shall be under the jurisdiction of the District or over which the District has control. (Aug. 17, 1937, ch. 690, title V, Art. III, § 15, as added July 10, 1940, 54 Stat. 747, ch. 568.)

§ 47–1630. Compromise and settlement of taxes.

In all cases where the assessor claims that a decedent was domiciled in the District at the time of his death and the taxing authorities of a State or States make a similar claim with respect to their State or States, the assessor may, with the approval of the Commissioners, compromise and settle the taxes imposed by this chapter. (Aug. 17, 1937, ch. 690, title V, Art. III, § 16, as added June 22, 1942, 56 Stat. 377, ch. 433, § 5.)

EFFECTIVE DATE

Section 6 of act June 22, 1942, provided that: "The amendment made by section 5 of this Act [adding this section] shall apply to estates of decedents dying before or after its enactment [June 22, 1942]."

Chapter 17.—FINANCIAL INSTITUTION, GUARANTY COMPANY, AND PUBLIC UTILITY TAXES

Sec.

47–1701. Banks, gas, electric-lighting, and telephone companies.
47–1702. Bonding, title, guaranty and fidelity companies.
47–1703. Savings banks.
47–1704. Building associations.
47–1705. Insolvent building or homestead associations.
47–1706. Private banks.
47–1707. Washington Stock Exchange.
47–1708. Note brokers.
47–1709. Private banks and note brokers to pay annual tax on the first day of July each year.
47–1710. Applicability of Acts of Congress to national banks in the District of Columbia.

§ 47–1701. Banks, gas, electric-lighting, and telephone companies.

Each national bank as the trustee for its stockholders, through its president or cashier, and all other incorporated banks and trust companies in the District of Columbia, through their presidents or cashiers, and all gas, electric lighting, and telephone companies, through their proper officers, shall make affidavit to the board of personal-tax appraisers on or before the 1st day of August each year as to the amount of its or their gross earnings or gross receipts, as the case may be, for the preceding year ending the 30th day of June, and each national bank and all other incorporated banks and trust companies respectively shall pay to the collector of taxes of the District of Columbia per annum 6 percent on such gross earnings and each gas company, electric lighting company, and telephone company shall pay to the collector of taxes of the District of Columbia per annum 4 per centum on such gross receipts, from the sale of public utility commodities and services within the District of Columbia. And in addition thereto the real estate owned by each national or other incorporated bank, and each trust, gas, electric lighting, and telephone company in the District of Columbia shall be taxed as other real estate in said District. Each gas, electric lighting, and telephone company shall pay, in addition to the taxes herein mentioned, the franchise tax imposed by the District of Columbia Income and Franchise Tax Act of 1947, and the tax imposed upon stock in trade of dealers in general merchandise under section 47–1207. (July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 5; July 26, 1939, 53 Stat. 1107, ch. 367, title IV, § 2(a); May 18, 1954, 68 Stat. 118 ch. 218, title XIV, § 1401; July 24, 1956, 70 Stat. 599, ch. 669, § 8 (a).)

REFERENCES IN TEXT

The District of Columbia Income and Franchise Tax Act of 1947, referred to in the text, is classified to subchapter II of chapter 15 of this title.

AMENDMENTS

1956—Act July 24, 1956, eliminated provisions which related to taxation of street railroad companies and companies operating street railroads and bus services.

1954—Act May 18, 1954, included companies operating bus services, reduced the tax on gross receipts of street railroad companies and companies operating street railroads and bus services from 3 to 2 per centum, required payment of vehicle-mileage tax, and substituted provisions reqiuring payment of the income and franchise taxes for provisions which required payment of corporate income taxes.

1939—Act July 26, 1939, required a report of gross receipts, reduced the tax on gas companies from 5 to 4 per centum and on street railroads from 4 to 3 per centum, increased the tax on insurance companies from 1½ to 2 per centum, and inserted provisions requiring gas, electric light, telephone and street railroad companies to pay the corporate income tax and the personal property tax on merchandise stock in trade in addition to the tax imposed by this section.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 8(a) of act July 24, 1956, provided in part that the amendment of this section shall be effective on Aug. 15, 1956.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 1403 of act May 18, 1954, provided in part that: "The first section of this title [amending this section] shall become effective on the 1st day of July 1954."

EFFECTIVE DATE OF 1939 AMENDMENT

Section 2 (b) of title IV of act July 26, 1939, provided as follows: "This section [amending this section] shall not apply to gross earnings or gross receipts for any fiscal year ending the 30th day of June prior to the fiscal year ending June 30, 1940. Taxes shall be levied and collected for the fiscal years preceding the fiscal year ending June 30, 1940, under said paragraph 5 of section 6 of said act of July 1, 1902, as if this title had not been enacted."

TAX ON PRIVILEGE OF DOING BUSINESS

The District of Columbia Revenue Act of 1937, August 17, 1937, 50 Stat. 688, ch. 690, title VI, § 16, as added by act of May 16, 1938, 52 Stat. 369, ch. 223, § 6 (a), provided that the entire title VI, imposing a tax on the privilege of doing business, should expire June 30, 1939. This title appeared as sections 970 to 970r of title 20 of the 1929 District of Columbia Code, Supp. V, Title VII of the Revenue Act of 1939, July 26, 1939, 53 Stat. 1119, ch. 367, provided that:

"The laws authorizing the imposition by the District of Columbia of intangible personal property taxes and business privilege taxes are hereby extended from and after June 30, 1939, for the following purposes in connection with the taxes accrued or due under such laws prior to July 1, 1939—

"(1) For the imposition of assessments and penalties, civil and criminal, for the violation of or failure to comply with such laws and the regulations issued thereunder;

"(2) For requiring the making, filing, and submission of returns and reports required by such laws;

"(3) For the examination of all books, records, and other documents, and witnesses; and

"(4) For the assessment and collection of such taxes and the filing of liens therefor."

TAXATION OF STREET RAILROAD COMPANIES

Section 2 of the act Apr. 28, 1904, 33 Stat. 564, ch. 1815, provided in part: "That that part of the proviso in paragraph five, section six [this section], relating to street railroads 'shall be construed to mean that all street railroad companies shall pay four per centum per annum on their gross receipts within the District of Columbia and other taxes as provided by existing law.'"

NOTES TO DECISIONS

In general

This statute is all inclusive covering gross earnings from whatever source. *Potomac Elec. Power Co.* v. *Hazen* (1937, 90 F. 2d 406, 67 App. D. C. 161).

This being a measure to tax the gross earnings of gas, electric and telephone companies, said tax is merely franchise in nature and therefore is not a burden on commerce. *Id.*

Attachment date

Liability for gross receipts tax, on operators of street railroads and buses in District of Columbia, attached as gross earnings were received, and even though statute leveling tax was repealed prior to date for payment thereof, liability for payment was not thereby affected. *D.C. Transit System, Inc.* v. *Pearson et al.* (D.C.D.C. 1957, 149 F. Supp. 18).

Classification of banks

A difference in tax rate on gross earnings as between savings banks and national and all other incorporated banks constituted a valid classification for tax purposes. *Hamilton Nat. Bank* v. *District of Columbia* (1946, 156 F. 2d 843, 81 U. S. App. D. C. 200, certiorari denied 70 S. Ct. 241, 338 U. S. 891, 94 L. Ed. 547).

Where national banks and savings banks in District of Columbia all engaged in both savings account and commercial banking business, administrative classification of state banks as savings banks and national banks as not savings banks for tax purposes was improper. *Id.*

Construction

The Loan Shark Law, § 26–601 et seq., the usury law, § 28–703 et seq., and this chapter are to be read together and when so read constitute a comprehensive code for business of lending money in the District of Columbia. *Hartman* v. *Lubar* (1943, 133 F. 2d 44, 77 U. S. App. D. C. 95, certiorari denied 63 S. Ct. 1329, 319 U. S. 767, 87 L. Ed. 1716, rehearing denied 64 S. Ct. 30, 320 U. S. 808, 88 L. Ed. 488).

Electric company

Street equipment of electric power company, was not "real estate." *Rudolph* v. *Potomac Elec. Power Co.* (1928, 24 F. 2d 882, 58 App. D. C. 54, 57 A.L.R. 865, certiorari denied 49 S. Ct. 185, 278 U.S. 656, 73 L. Ed. 565).

Federal laws

12 U. S. C. § 548 relating to state taxation of national bank shares was addressed to state legislatures and was inapplicable to gross earnings tax to which banks in District of Columbia were subject, although said section was relevant as indication of congressional policy. *Hamilton Nat. Bank* v. *District of Columbia* (1946, 156 F. 2d 843, 81 U. S. App. D. C. 200, certiorari denied 70 S. Ct. 241, 338 U. S. 891, 94 L. Ed. 547).

Franchise tax

Francise tax distinguished from property tax, see *Potomac Electric P. Co.* v. *Rudolph* (1928, 29 F. 2d 634, 58 App. D. C. 261, certiorari denied 49 S. Ct. 185, 278 U. S. 656, 73 L. Ed. 565).

Gas company

A company engaged in the manufacture and supplying of gas may deduct from gross receipts the amount expended for raw materials from which gas is manufactured when the money that was spent for the raw materials had been taken from the capital of the company. *District of Columbia* v. *Georgetown Gas-Light Co.* (1916, 45 App. D.C. 63).

Interest

Interest paid by national bank in District of Columbia to depositors on savings accounts was not deductible in computing gross earnings within this section. *Hamilton Nat. Bank* v. *District of Columbia* (1946, 156 F. 2d 843, 81 U. S. App. D. C. 200, certiorari denied 70 S. Ct. 241, 338 U. S. 891, 94 L. Ed. 547).

The act of April 24, 1917, § 1 (U. S. C., title 31, § 746) exempting interest on government bonds, etc., from taxation, was applicable to the tax imposed by this paragraph. *District of Columbia* v. *Riggs Nat. Bank* (1929, 30 F. 2d 873, 58 App. D. C. 349, certiorari denied 49 S. Ct. 343, 279 U. S. 846, 73 L. Ed. 991).

Liability for tax

Successor, which assumed all of liabilities of predecessor operator of streetcar and bus lines in District of Columbia, was liable for gross receipts tax on predecessor's earnings. *D. C. Transit System, Inc.* v. *Pearson et al.* (D.C.D.C. 1957, 149 F. Supp. 18).

Motion to dismiss

Where plaintiff bank seeks recovery of taxes allegedly paid by it involuntarily after they were illegally and erroneously assessed by the District over the amount actually due, motion to dismiss complaint will be denied, since the taxes were paid involuntarily and parties were not on terms of equality. *American Security & Trust Co.* v. *District of Columbia* (D.C.D.C. 1950, 91 F. Supp. 713, affirmed 202 F. 2d 21, 92 U.S. App. D.C. 33).

Telephone company

Payments received by telephone company, which rendered telephone services to public in the District of Columbia, for services rendered to telephone companies doing business in Maryland and Virginia were not subject to gross receipts tax applicable to public utility companies doing business in District of Columbia. *The Chesapeake and Potomac Tel. Co.* v. *District of Columbia. District of Columbia* v. *The Chesapeake and Potomac Tel. Co.* (1963, 325 F. 2d 217, 117 U.S. App. D.C. 21).

The District of Columbia gross receipts tax applicable to public utility companies is an excise tax on privilege of furnishing franchised public utility services in the District. *Id.*

When a public service company supplies services or facilities to another public utility company in the same field for sole purpose of enabling the latter company to serve its customers more efficiently, such services are not public utility commodities or services within meaning of

gross receipts tax statute applicable to public utility companies, and such services are not subject to gross receipts tax. *Id.*

Where all telephone company's services were performed within District of Columbia, its receipts from all its services including handling of interstate calls, which services were necessarily performed in conjunction with services which connecting companies performed outside the District, were subject to tax imposed on gross receipts from sale of public utility services within the District. *Chesapeake & Potomac Telephone Co.* v. *District of Columbia* (1943, 137 F. 2d 674, 78 U. S. App. D. C. 53).

Where telephone company did not print telephone directories but bought them as finished products, the company was entitled to deduct amount which it paid for the directories from its gross receipts, in order to determine its "gross earnings" subject to gross earnings tax. *Id.*

§ 47–1702. Bonding, title, guaranty and fidelity companies.

All companies, incorporated or otherwise, who guarantee the fidelity of any individual or individuals, such as bonding companies, and all companies who furnish abstracts of titles to real property, or who insure real estate titles, shall pay to the collector of taxes of the District of Columbia one and one-half per centum of their gross receipts in the District of Columbia. (July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 6; Apr. 28, 1904, 33 Stat. 564, ch. 1815.)

NOTES TO DECISIONS

Construction

The words "gross receipts" here construed are not equivalent to the words "consideration received" used in a section not in issue imposing a tax on consideration received on all insurance contracts on risks in the District. *Suburban Title & Investment Corp.* v. *District of Columbia* (1950, 180 F. 2d 387, 86 U. S. App. D. C. 112).

§ 47–1703. Savings banks.

Savings banks having no capital stock and paying interest to their depositors shall, through their president or cashier, make affidavit to the board of personal-tax appraisers on or before the 1st day of August in each year as to the amount of their surplus and undivided profits, and shall pay to the collector of taxes of the District of Columbia a sum equal to one and one-half per centum on the amount of their surplus and undivided profits on the 30th day of June preceding.

Incorporated savings banks paying interest to their depositors shall, through their president or cashier, make report under oath to the board of personal-tax appraisers on or before the 1st day of August in each year as to the amount of their gross earnings, less the amount paid as interest to their depositors for the preceding year ending June 30th, and shall pay thereon to the collector of taxes of the District of Columbia four per centum per annum. (July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 7; Apr. 28, 1904, 33 Stat. 564, ch. 1815.)

AMENDMENT

1904—Act Apr. 28, 1904, added the second paragraph.

NOTES TO DECISIONS

Classification of banks

A difference in tax rate on gross earnings as between savings banks and national and all other incorporated banks constituted a valid classification for tax purposes. *Hamilton Nat. Bank* v. *District of Columbia* (1946, 156 F. 2d 843, 81 U. S. App. D. C. 200, certiorari denied 70 S. Ct. 241, 338 U. S. 891, 94 L. Ed. 547).

Where national banks and savings banks in the District of Columbia engaged in both savings account and commercial banking business, administrative classification for gross earnings tax purposes of state banks as savings banks and national banks as not savings banks was invalid as not in harmony with this chapter. *Id.*

Where a bank is an incorporated savings bank under any and all tests pursuant to which that status is accorded to state banks, and when the character of its business and its methods of conducting it are identified with those of state institutions, it is taxable under § 47–1703 and not under § 47–1701. *Hamilton National Bank* v. *District of Columbia* (1949, 176 F. 2d 624, 85 U. S. App. D. C. 109, certiorari denied 70 S. Ct. 241, 338 U. S. 891, 94 L. Ed. 547).

The Board of Tax Appeals was justified in holding state chartered banks to be taxable under § 47–1703 as incorporated savings banks, and not taxable under § 47–1701. *Id.*

Constitutionality

To rebut presumption of constitutionality of tax statutes or pattern of tax statutes there must at minimum be firm factual showing of burdens so onerous on class subject to discrimination and so lacking in possible foundation as to negative possibility of reasonable judgment. *District of Columbia National Bank* v. *District of Columbia* (1965, 348 F. 2d 808, 121 U.S. App. D.C. 196).

Record showing that there were seven national banks in District of Columbia and a number of banks in adjoining counties of Virginia and Maryland, that about 50% of District of Columbia national bank's business was with depositors and borrowers with residence or business location in those counties and that such bank was in active competition with national banks located in those counties was insufficient to rebut presumption of constitutionality of District of Columbia statute imposing gross earnings tax. *Id.*

Construction

Plain meaning of words is generally most persuasive evidence of intent of legislature, and must be taken, however hard or unexpected particular effect, where unambiguous language calls for logical and sensible result. *District of Columbia National Bank* v. *District of Columbia* (1965, 348 F. 2d 808, 121 U.S. App. D.C. 196).

Courts may properly use recourse to legislative history in construing statute, and may depart from literal meaning of words when at variance with legislative intent as revealed by legislative history. *Id.*

In construing statutes, it was duty of court to seek to harmonize simultaneous application of general legislation and District of Columbia legislation. *Id.*

National banks in District of Columbia were subject to gross earnings tax imposed by District of Columbia taxing statute. *Id.*

Franchise tax

The tax imposed by this statute is clearly a franchise tax, and not a property tax on the earnings of banks as such. *Security Sav. & Commercial Bank* v. *District of Columbia* (1922, 279 F. 185, 51 App. D. C. 316).

Gross earnings tax

In proceeding by bank against District of Columbia for review of decision of Board of Tax Appeals, decision of board that bank, which was paying interest to its depositors, was required to pay gross earnings tax for years 1946 and 1947 although bank sold its assets, ceased business and went into voluntary liquidation on November 30, 1946, was affirmed by the Court of Appeals in banc by an equally divided court. *Columbia National Bank of Wash.* v. *District of Columbia* (1952, 195 F. 2d 942, 89 U. S. App. D. C. 224).

Motion to dismiss

Where plaintiff bank seeks recovery of taxes allegedly paid by it involuntarily after they were illegally and erroneously assessed by the District over the amount actually due, motion to dismiss complaint will be denied, since the taxes were paid involuntarily and parties were not on terms of equality. *American Security & Trust Co.* v. *District of Columbia* (D.C.D.C. 1950, 91 F. Supp. 713, affirmed 202 F. 2d 21, 92 U.S. App. D.C. 33).

Payment under protest

Where litigation, determining that trust companies were subject merely to tax of 4 percent of their gross

earnings after deduction of interest paid on savings deposits, had not been concluded at time they paid, under protest, gross earnings tax of 6 percent, without deduction of interest paid on savings deposits; and they would have risked penalties of 1 percent a month and summary distraint of their property by not paying, it could not be said that payments had been made "voluntarily," so as to preclude recovery. *District of Columbia* v. *American Security & Trust Co.* (1953, 202 F. 2d 21, 92 U. S. App. D. C. 33).

Public utilities

Conventional public utilities are entitled to rates and gross revenues sufficient to cover all elements of cost of utility service, including gross earnings taxes, and in addition a fair net return after taxes. *District of Columbia National Bank* v. *District of Columbia* (1965, 348 F. 2d 808, 121 U.S. App. D.C. 196).

§ 47–1704. Building associations.

Building associations in the District of Columbia shall pay to the collector of taxes of the District of Columbia two per centum per annum on their entire gross earnings for the preceding year ending June 30th. (July 1, 1902, 32 Stat. 620, ch. 1352, § 6, par. 9; Apr. 28, 1904, 33 Stat. 564, ch. 1815.)

AMENDMENT

1904—Act Apr. 28, 1904, reduced the tax from 4 to 2 per centum per annum.

§ 47–1705. Insolvent building or homestead associations.

Whenever and after any building or homestead association, which was incorporated or doing business under the law of the District of Columbia, has ceased to do business by reason of insolvency no tax on personal property, either tangible or intangible, shall be levied, assessed, or collected by the District of Columbia against or from such association if such tax shall diminish the assets of such association necessary for the payment of the full amount due on share accounts in, or on shares of, such association to the holders thereof, and such tax, if heretofore levied, shall be abated as against any such associations as are or have been found by the comptroller of the currency to be insolvent. (Aug. 5, 1939, 53 Stat. 1210, ch. 446.)

§ 47–1706. Private banks.

Private banks or bankers not incorporated shall pay a tax of five hundred dollars per annum. Every person, firm, company, or association not incorporated having a place of business where credits are opened by the deposit or collection of moneys or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bills of exchange or promissory notes are received for discount or for sale, shall be regarded as a private bank or banker. (July 1, 1902, 32 Stat. 621, ch. 1352, § 6, par. 14.)

§ 47–1707. Washington Stock Exchange.

The Washington Stock Exchange, through its president or treasurer, shall pay to the collector of taxes of the District of Columbia a sum equal to five hundred dollars per annum in lieu of tax on the members thereof for business done on said exchange. (July 1, 1902, 32 Stat. 622, ch. 1352, § 6, par. 15.)

CODIFICATION

That part of section 6, par. 15, of act July 1, 1902, which imposed a tax of $250 per annum upon general brokers, and of $100 per annum upon any broker who is a member of a regularly organized stock exchange outside of the District, has been omitted in view of *Lappin* v. *District of Columbia* (22 App. D. C. 80), holding in effect that the statute, by imposing an unreasonable burden on the right of a citizen to pursue a lawful occupation open to his competitors upon less onerous terms operates substantially as the taking of property without due process of law, and was therefore within the prohibition of the 5th Amendment of the Constitution.

§ 47–1708. Note brokers.

Note brokers shall pay a tax of one hundred dollars per annum. Every person, firm, company, or association not incorporated (except private banks and bankers) that loans money on promissory notes without real estate or collateral security or advances money on personal property as security without possession of said personal property shall be deemed a note broker: *Provided,* That exception shall be made of cooperative associations whose business is restricted to the members of such association. (July 1, 1902, 32 Stat. 622, ch. 1352, § 6, par. 16.)

§ 47–1709. Private banks and note brokers to pay annual tax on the first day of July each year.

The taxes for said private banks and bankers, and note brokers shall be paid to the collector of taxes of the District of Columbia, and shall date from the 1st day of July in each year and expire on the 30th day of June following. Said taxes shall date from the 1st day of the month in which the liability begins, and payment shall be made for a proportionate amount. (July 1, 1902, 32 Stat. 622, ch. 1352, § 6, par. 17.)

§ 47–1710. Applicability of Acts of Congress to national banks in the District of Columbia.

The provisions of all Acts of Congress relating to national banks shall apply in the several States, the District of Columbia, the several Territories and possessions of the United States, and the Commonwealth of Puerto Rico. (Sept. 8, 1959, 73 Stat. 458, Pub. L. 86–230, § 14.)

CROSS REFERENCE

Taxation of national banks, see § 47–1701 and 12 U.S.C. § 548.

Chapter 18—INSURANCE COMPANIES

Sec.
47–1801. Licenses—Fee—Term.
47–1802. Penalty for engaging in business without license or certificate of authority.
47–1803. Prosecutions.
47–1804. Annual statements required—Filing fee.
47–1805. Revocation of license if statement not filed.
47–1806. Rates on insurance companies—Exceptions—Definitions—Marine insurance excluded.
47–1807. Penalty for failure to pay tax.
47–1808. Exemption of nonprofit relief associations

§ 47–1801. Licenses—Fee—Term.

On and after the first day of September 1937, every domestic, foreign, or alien company organized as a stock, mutual, reciprocal, Lloyd's, fraternal, or any other type of insurance company or association, before issuing contracts of insurance against loss of life or health, or by fire, marine, accident, casualty, fidelity and surety title guaranty, or other

hazard not contrary to public policy, shall obtain from the superintendent of insurance of the District of Columbia an annual license or certificate of authority, upon payment of a fee of $25 to the collector of taxes of the District of Columbia. All licenses for insurance companies who may apply for permission to do business in the District of Columbia shall date from the first of the month in which application is made, and expire on the 30th day of April following, and payments shall be made in proportion. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title II, § 1.)

CROSS REFERENCES

Fees for fraternal benefit associations, see § 35–906.

Taxation of marine insurance companies, see § 35–1108 et seq.

§ 47–1802. Penalty for engaging in business without license or certificate of authority.

Any such company issuing contracts of insurance in the District of Columbia, without first having obtained license or certificate of authority from the superintendent of insurance so to do, shall upon conviction be subject to a fine of $100 per day for each day it shall engage in business without such license or certificate of authority. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title II, § 2.)

§ 47–1803. Prosecutions.

All prosecutions for violations of this chapter shall be in the District of Columbia Court of General Sessions by the corporation counsel of the District of Columbia or any of his assistants. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title II, § 3; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 47–1804. Annual statements required—Filing fee.

Each of such companies shall file an annual statement, in the form prescribed by the superintendent of insurance, before March 1 of each year, of its operations for the year ending December 31 immediately preceding. Such statement shall be verified by the oath of the president and secretary or in their absence by two other principal officers. The fee for filing said statement shall be $20 and payment therefor shall be made to the collector of taxes of the District of Columbia. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title II, § 4.)

CROSS REFERENCE

Annual statement by fire, casualty, and marine insurance companies, see § 35–1311.

§ 47–1805. Revocation of license if statement not filed.

If any such company shall fail to file the annual statement herein required, the superintendent of insurance may thereupon revoke its license or certificate of authority to transact business in the District of Columbia. (Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 5.)

§ 47–1806. Rates on insurance companies—Exceptions—Definitions—Marine insurance excluded.

All such companies, including companies which issue annuity contracts, shall also pay to the collector of taxes of the District of Columbia a sum of money as taxes equal to 2 per centum of their policy and membership fees and net premium receipts or consideration received on all insurance and annuity contracts on risks in the District of Columbia, said taxes to be paid before the 1st day of March of each year on the amount of such income for the year ending December 31, next preceding. Such tax shall be in lieu of all other taxes except (1) taxes upon real estate and (2) fees and charges provided for by the insurance laws of the District including amendments made to such laws by this title.

Net premium receipts or consideration received means gross premiums or consideration received less the sum of the following:

1. Premiums received for reinsurance assumed and premiums or consideration returned on policies or contracts canceled or not taken.

2. Dividends paid in cash or used by the policyholders in payment of renewal premiums.

Nothing contained in this section or in sections 47–1801, 47–1807 shall apply with respect to marine insurance written within the said District and reported, taxed, and licensed under the provisions of sections 35–1101 to 35–1132. (Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 6; May 16, 1938, 52 Stat. 358, ch. 223, § 2.)

AMENDMENT

1938—Act May 16, 1938, added the words "including companies which issue annuity contracts" following the word "companies" the first time said word appears, "or consideration" following the word "receipts" the first time said word appears, "and annuity" following the word "insurance" the first time said word appears, "or consideration received" and "or consideration" in the second paragraph, "received for reinsurance assumed and premiums or consideration returned" and "or contracts" in the third paragraph (numbered (1)), and deleted the words "Premiums paid for reinsurance where the same are paid to companies duly licensed to do business in the District, and."

NOTES TO DECISIONS

Construction

Where section not in issue imposes a tax on "consideration received" the words "gross receipts" being construed in the instant case are not equivalent to "consideration received." *Suburban Title & Investment Corp.* v. *District of Columbia* (1950, 180 F. 2d 387, 86 U. S. App. D. C. 112).

Insurance companies

Title insurance companies, whose business consisted solely of issuing either certificates of title or title policies to real estate in District of Columbia and such further incidental transactions as related to such main objectives, were "insurance companies" within this section imposing tax on membership fees and premium receipts of insurance companies in lieu of all other taxes. *Real Estate Title Ins. Co.* v. *District of Columbia* (1947, 161 F. 2d 887, 82 U. S. App. D. C. 170).

§ 47–1807. Penalty for failure to pay tax.

If any such company shall fail to pay the tax herein required, it shall be liable to the District of Columbia for the amount thereof, and in addition thereof a penalty of 8 per centum per month thereafter until paid. (Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 7.)

§ 47–1808. Exemption of nonprofit relief associations.

Nothing contained in this chapter shall apply to any relief association, not conducted for profit, composed solely of officers and enlisted men of the United States Army or Navy, or solely of employees of any other branch of the United States Government service or solely of employees of the District of Columbia government, or solely of employees of any individual, company, firm, or corporation or to any fraternal organization which issues contracts of insurance exclusively to its own members. (Aug. 17, 1937, 50 Stat. 676, ch. 690, title II. § 8.)

NOTES TO DECISIONS

Group Health Association

Group Health Association falls within exempting proviso of statute. *Jordan* v. *Group Health Assn.* (1940, 107 F. 2d 239, 71 App. D. C. 38).

The word "corporation" as used in the exemption obviously refers to private concerns, not governmental agencies, and Group Health is relieved from the requirements of this section. *Id.*

Navy Mutual Aid Association

The Navy Mutual Aid Association formed to aid families of deceased members, by providing a substantial sum for their relief at as near actual net cost of insurance as possible, and by securing for them without cost, pensions to which they may be entitled, was subject to the provisions of the Life Insurance Act but not subject to the tax on insurance companies. *Fechteler et al.* v. *Jordan* (1955, 218 F. 2d 865, 95 U. S. App. D. C. 54).

Chapter 19.—MOTOR FUEL TAX

Sec.
47–1901. Rate—Use restricted.
47–1901a, 47–1901b. Repealed.
47–1902. Definitions.
47–1903. Importers — License — Application for — Contents—Fee—Bond—Issuance—Revocation.
47–1904. Monthly report to assessor of amount of fuel sold.
47–1905. Invoices to be rendered by importers to all purchasers except in cases of retail sales.
47–1906. Tax to be paid to collector not later than twenty-fifth day of next succeeding calendar month.
47–1907. Importer's records of transactions subject to inspection of assessor and collector.
47–1908. Penalty for accepting fuel from importer without an itemized sale statement.
47–1909. Fuel exported from District of Columbia exempted from taxation.
47–1910. Motor fuel used for any purpose other than motor vehicle—Refund of tax payment.
47–1911. Violations—Penalty.
47–1912. Tax on fuel sold by United States agency in the District of Columbia.
47–1913. Violations to be prosecuted by corporation counsel.
47–1914. Construction—Not to affect public hackers.
47–1915. Construction—Personal tax laws not affected.
47–1916. Commissioners to make necessary regulations.
47–1917. Street paving—Assessments.
47–1918. Revenue and disbursements.
47–1919. Continuation of uncompleted projects at end of fiscal year.

§ 47–1901. Rate—Use restricted.

A tax of 7 cents per gallon on all motor-vehicle fuels within the District of Columbia, sold or otherwise disposed of by an importer, or used by him in a motor vehicle operated for hire or for commercial purposes, shall be levied, collected, and paid in the manner hereinafter provided.

All proceeds of the taxes imposed under the District of Columbia Revenue Act of 1937, except as otherwise provided in section 47–1910, and all moneys collected from fees charged for the registration and titling of motor vehicles including fees charged for the issuance of permits to operate motor vehicles, shall be deposited in a special account in the Treasury of the United States entirely to the credit of the District of Columbia, and shall be appropriated and used solely and exclusively for the following purposes:

(1) For the construction, reconstruction, improvement, and maintenance of public highways, including the necessary administrative expenses in connection therewith;

(2) For the expenses of the office of the director of vehicles and traffic incident to the regulation and control of traffic and the administration of the same; and

(3) For the expenses necessarily involved in the police control, regulation, and administration of traffic upon the highways: *Provided, however,* That the total amount to be expended under this item shall not exceed 15 per centum of the total amount appropriated for pay and allowances of officers and members of the Metropolitan police force. For the fiscal year 1938 all moneys appropriated for the construction, reconstruction, improvement, and maintenance of highways and administrative expenses in connection therewith, all moneys appropriated for the department of vehicles and traffic, and 15 per centum of all moneys appropriated for pay and allowances of officers and members of the Metropolitan police force shall be paid from and chargeable against the fund hereby created.

(Apr. 23, 1924, 43 Stat. 106, ch. 131, § 1; Aug. 17, 1937, 50 Stat. 676, ch. 690, title III, § 1; June 4, 1952, 66 Stat. 100, ch. 366, § 1; May 18, 1954, 68 Stat. 117, ch. 218, title XI, § 1101, Sept. 30, 1966, 80 Stat. 858, Pub. L. 89–610, title VIII, § 801.)

AMENDMENTS

1966—Act Sept. 30, 1966, increased the motor vehicle fuel tax from six to seven cents per gallon.

1954—Act May 18, 1954, increased the motor-vehicle fuel tax from 5 to 6 cents a gallon.

1952—Act June 4, 1952, increased the tax per gallon on all motor-vehicle fuels within the District from 2 to 5 cents per gallon.

1937—Act Aug. 17, 1937, deleted the following sentence from the first paragraph: "The proceeds of the tax, except as provided in section 10, shall be paid into the Treasury of the United States entirely to the credit of the District of Columbia and shall be available for appropriation by the Congress exclusively for road and street improvement and repair," and added the second paragraph.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 803 of act Sept. 30, 1966, 80 Stat. 858, Pub. L. 89–610, title VIII, provided: "The amendments made by section 801 and 802 of this title [to this section and § 47–1912] shall take effect on the first day of the first month which begins more than thirty days after the date of approval of this Act [Sept. 30, 1966]".

EFFECTIVE DATE OF 1954 AMENDMENT

Section 1103 of act May 18, 1954, provided that: "This title [amending this section and section 47–1912] shall become effective on the first day of the first month following approval of this Act [May 18, 1954]."

EFFECTIVE DATE OF 1952 AMENDMENT

Section 4 of act June 4, 1952, provided that: "This Act [amending this section and section 47–1912, and repealing section 47–1901b] shall become effective on the first day

of the first month following its enactment [June 4, 1952], but not prior to July 1, 1952."

CONSTRUCTION; SEVERABILITY OF PROVISIONS; RULES AND REGULATIONS

For construction of act Sept. 30, 1966, Pub. L. 89–610, amending this section, severability of provisions with respect thereto, and authority to make rules and regulations to carry out provisions thereof, see §§ 1003—1005 of such act, set out as a note under § 25–124.

COMPACTS FOR TAXATION OF MOTOR FUELS CONSUMED BY INTERSTATE BUSES AND FOR BUS TAXATION PRORATION AND RECIPROCITY.

TITLE I

SECTION 101. The consent of Congress is hereby given to the States of Maine, Massachusetts, New Hampshire, Pennsylvania, and Maryland, and to the District of Columbia to enter into a compact on taxation of motor fuels consumed by interstate buses. But before any other States, any Province of Canada, or any State or territory or the Federal District of Mexico shall be made a party to such compact, the further consent of Congress shall first be obtained. Such compact shall be in substantially the following form:

COMPACT ON TAXATION OF MOTOR FUELS CONSUMED BY INTERSTATE BUSES

ARTICLE I.—PURPOSES

The purposes of this agreement are to—

(a) avoid multiple taxation of motor fuels consumed by interstate buses and to assure each State of its fair share of motor fuel taxes;

(b) establish and facilitate the administration of a criterion of motor fuel taxation for interstate buses which is reasonably related to the use of highway and related facilities and services in each of the party States; and

(c) encourage the availability of a maximum number of buses for intrastate service by removing motor fuel taxation as a deterrent in the routing of interstate buses.

ARTICLE II.—DEFINITIONS

(a) State: State shall include the States of the United States, the District of Columbia, the territories of the United States, the Provinces of Canada, and the States, Territories, and Federal District of Mexico.

(b) Contracting State: Contracting State shall mean a State which is a party to this agreement.

(c) Administrator: Administrator shall mean the official or agency of a State administering the motor fuel taxes involved.

(d) Person: Person shall include any individual, firm, copartnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.

(e) Bus: Bus shall mean any motor vehicle of a bus type engaged in the interstate transportation of passengers and subject to the jurisdiction of the Interstate Commerce Commission or any agency successor thereto, or one or more State regulatory agencies concerned with the regulation of passenger transport.

(f) Gallon: Gallon shall mean the liquid measure containing 231 cubic inches.

ARTICLE III.—GOVERNING PRINCIPLE

For purposes of this compact, the primary principle for the imposition of motor fuel taxes shall be consumption of such fuel within the State. Motor fuel consumed by buses shall be taxed on the existing basis, as it may be from time to time, and under the procedures for collection of such taxes by each party State, except that to the extent that this compact makes provision therefor, or for any matter connected therewith, such provision shall govern.

ARTICLE IV.—HOW FUEL CONSUMED TO BE ASCERTAINED

The amount of fuel used in the operation of any bus within this State shall be conclusively presumed to be the number of miles operated by such bus within the State divided by the average mileage per gallon obtained by the bus during the tax period in all operations, whether within or without the party State. Any owner or operator of two or more buses shall calculate average mileage within the meaning of this article by computing single average figures covering all buses owned or operated by him.

ARTICLE V.—IMPOSITION OF TAX

Every owner or operator of buses shall pay to the party State taxes equivalent to the amount of tax per gallon multiplied by the number of gallons used in its operations in the party State.

ARTICLE VI.—REPORTS

On or before the last business day of the month following the month being reported upon, each bus owner or operator subject to the payment of fuel taxes pursuant to this compact shall make such reports of its operations as the State administrator of motor fuel taxes may require and shall furnish the State administrator in each other party State wherein his buses operate a copy of such report.

ARTICLE VII.—CREDIT FOR PAYMENT OF FUEL TAXES

Each bus owner or operator shall be entitled to a credit equivalent to the amount of tax per gallon on all motor fuel purchased by such operator within the party State for use in operations either within or without the party State, and upon which the motor fuel tax imposed by the laws of such party State has been paid.

ARTICLE VIII.—ADDITIONAL TAX OR REFUND

If the bus owner or operator's monthly report shows a debit balance after taking credit pursuant to article VII, a remittance in such net amount due shall be made with the report. If the report shows a credit balance, after taking credit as herein provided, a refund in such net amount as has been overpaid shall be made by the party State to such owner or operator.

ARTICLE IX.—ENTRY INTO FORCE AND WITHDRAWAL

This compact shall enter into force when enacted into law by any two States. Thereafter it shall enter into force and become binding upon any State subsequently joining when such State has enacted the compact into law. Withdrawal from the compact shall be by act of the legislature of a party State, but shall not take effect until one year after the Governor of the withdrawing State has notified the Governor of each other party State, in writing, of the withdrawal.

ARTICLE X.—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any State participating herein, the compact shall remain in full force and effect as to the remaining party States and in full force and effect as to the State affected as to all severable matters.

SEC. 102. As used in the compact set forth in section 101 with reference to the District of Columbia—

(1) the term "Legislature" shall mean the Congress of the United States; and

(2) the term "Governor" shall mean the Board of Commissioners of the District of Columbia.

SEC. 103. The Board of Commissioners of the District of Columbia shall enter into the compact authorized by section 101 of this title without further action on the part of the Congress, and issue such rules and regulations as may be necessary for the implementation of such compact. Notwithstanding any provision of this Act, nothing herein shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners (other than the entry into a compact authorized by this Act) or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board

of Commissioners in accordance with section 3 of such plan.

SEC. 104. All provisions of law applicable to the District of Columbia shall, to the extent they are inconsistent with the compact authorized by this title, be inapplicable to the taxation of buses (as that term is defined in the compact) in the District of Columbia during such time as the District is a party to such compact.

SEC. 105. The right to alter, amend, or repeal this title is expressly reserved.

TITLE II

SEC. 201. The consent of Congress is hereby given to the States of Maine, New Hamphire, Pennsylvania, Maryland, and New York, and to the District of Columbia to enter into a compact providing for bus taxation proration and reciprocity. But before any other State, any Province of Canada, or any State or territory or the Federal District of Mexico shall be made a party to such compact, the further consent of Congress shall first be obtained. Such compact shall be in substantially the following form:

BUS TAXATION PRORATION AND RECIPROCITY AGREEMENT

ARTICLE I.—PURPOSES AND PRINCIPLES

SEC. 1. Purposes of agreement: It is the purpose of this agreement to set up a system whereby any contracting State may permit owners of fleets of buses operating in two or more States to prorate the registration of the buses in such fleets in each State in which the fleets operate on the basis of the proportion of miles operated within such State to total fleet miles, as defined herein.

SEC. 2. Principle of proration of registration: It is hereby declared that in making this agreement the contracting States adhere to the principle that each State should have the freedom to develop the kind of highway user tax structure that it determines to be most appropriate to itself, that the method of taxation of interstate buses should not be a determining factor in developing its user tax structure, and that annual taxes or other taxes of the fixed-fee type upon buses which are not imposed on a basis that reflects the amount of highway use should be apportioned among the States, within the limits of practicality, on the basis of vehicle miles traveled within each of the States.

ARTICLE II.—DEFINITIONS

(a) State: State shall include the States of the United States, the District of Columbia, the territories of the United States, the Provinces of Canada, and the States, Territories, and Federal District of Mexico.

(b) Contracting State: Contracting State shall mean a State which is a party to this agreement.

(c) Administrator: Administrator shall mean the official or agency of a State administering the fee involved, or, in the case of proration of registration, the official or agency of a State administering the proration of registration in that State.

(d) Person: Person shall include any individual, firm, copartnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.

(e) Base State: Base State shall mean the State from or in which the bus is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled, or also in the case of a fleet bus the State to which it is allocated for registration under statutory requirements. In order that this section may not be used for the purpose of evasion of registration fees, the administrators of the contracting States may make the final decision as to the proper base State, in accordance with article III(h) hereof, to prevent or avoid such evasion.

(f) Bus: shall mean any motor vehicle of a bus type engaged in the interstate transportation of passengers and subject to the jurisdiction of the Interstate Commerce Commission, or any agency successor thereto, or one or more State regulatory agencies concerned with the regulation of passenger transport.

(g) Fleet: As to each contracting State, fleet shall include only those buses which actually travel a portion of their total miles in such State. A fleet must include three or more buses.

(h) Registration: Registration shall mean the registration of a bus and the payment of annual fees and taxes as set forth in or pursuant to the laws of the respective contracting States.

(i) Proration of registration: Proration of registration shall mean registration of fleets of buses in accordance with article IV of this agreement.

(j) Reciprocity: Reciprocity shall mean that each contracting State, to the extent provided in this agreement, exempts a bus from registration and registration fees.

ARTICLE III.—GENERAL PROVISIONS

(a) Effect on other agreements, arrangements, and understandings: On and after its effective date, this agreement shall supersede any reciprocal or other agreement, arrangement, or understanding between any two or more of the contracting States covering, in whole or in part, any of the matters covered by this agreement; but this agreement shall not affect any reciprocal or other agreement, arrangement, or understanding between a contracting State and a State or States not party to this agreement.

(b) Applicability to exempt vehicles: This agreement shall not require registration in a contracting State of any vehicles which are in whole or part exempt from registration under the laws or regulations of such State without respect to this agreement.

(c) Inapplicability to caravaned vehicles: The benefits and privileges of this agreement shall not be extended to a vehicle operated on its own wheels, or in tow of a motor vehicle, transported for the purpose of selling or offering the same for sale to or by any agent, dealer, purchaser, or prospective purchaser.

(d) Other fees and taxes: This agreement does not waive any fees or taxes charged or levied by any State in connection with the ownership or operation of vehicles other than registration fees as defined herein. All other fees and taxes shall be paid to each State in accordance with the laws thereof.

(e) Statutory vehicle regulations: This agreement shall not authorize the operation of a vehicle in any contracting State contrary to the laws or regulations thereof, except those pertaining to registration and payment of fees; and with respect to such laws or regulations, only to the extent provided in this agreement.

(f) Violations: Each contracting State reserves the right to withdraw, by order of the administrator thereof, all or any part of the benefits or privileges granted pursuant to this agreement from the owner of any vehicle or fleet of vehicles operated in violation of any provision of this agreement. The administrator shall immediately give notice of any such violation and withdrawal of any such benefits or privileges to the administrator of each other contracting State in which vehicles of such owner are operated.

(g) Cooperation: The administrator of each of the contracting States shall cooperate with the administrators of the others an each contracting State hereby agrees to furnish such aid and assistance to each other within its statutory authority as will aid in the proper enforcement of this agreement.

(h) Interpretation: In any dispute between or among contracting States arising under this agreement, the final decision regarding interpretation of questions at issue relating to this agreement shall be reached by joint action of the contracting States, acting through the administrator thereof, and shall upon determination be placed in writing.

(i) Effect of headings: Article and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or part hereof.

(j) Entry into force: This agreement shall enter into force and become binding between and among the contracting States when enacted or otherwise entered into by any two States. Thereafter, it shall enter into force and become binding with respect to any State when enacted into law by such State. If the statutes of any State so authorize or provide, such State may become party to this agreement upon the execution thereof by an executive or administrative official thereof acting on behalf of and for such State.

ARTICLE IV.—PRORATION OF REGISTRATION

(a) Applicability: Any owner of a fleet may register the buses of said fleet in any contracting State by paying

to said State total registration fees in an amount equal to that obtained by applying the proportion of in-State fleet miles divided by the total fleet miles, to the total fees which would otherwise be required for regular registration of each of all such vehicles in such contracting State.

All fleet pro rata registration fees shall be based upon the mileage proportions of the fleet during the period of twelve months ending on August 31 next preceding the commencement of the registration year for which registration is sought: Except, that mileage proportions for a fleet not operated during such period in the State where application for registration is made will be determined by the Administrator upon the sworn application of the applicant showing the operations during such period in other States and the estimated operations during the registration year for which registration is sought, in the State in which application is being made; or if no operations were conducted during such period a full statement of the proposed method of operation.

If any buses operate in two or more States which permit the proration of registration on the basis of a fleet of buses consisting of a lesser number of vehicles than provided in article II(g), such fleet may be prorated as to registration in such States, in which event the buses in such fleet shall not be required to register in any other contracting States if each such vehicle is registered in some contracting State (except to the extent it is exempt from registration as provided in article III(b)).

If the administrator of any State determines, based on his method of the operation thereof, that the inclusion of a bus or buses as a part of a fleet would adversely affect the proper fleet fee which should be paid to his State, having due regard for fairness and equity, he may refuse to permit any or all of such buses to be included in his State as a part of such fleet.

(b) Total fleet miles: Total fleet miles, with respect to each contracting State, shall mean the total miles operated by the fleet (1) in such State, (2) in all other contracting States, (3) in other States having proportional registration provisions, (4) in States with which such contracting State has reciprocity, and (5) in such other States as the administrator determines should be included under the circumstances in order to protect or promote the interest of his State; except that in States having laws requiring proration on the basis of a different determination of total fleet miles, total fleet miles shall be determined on such basis.

(c) Leased vehicles: If a bus is operated by a person other than the owner as a part of a fleet which is subject to the provisions of this article, then the operator of such fleet shall be deemed to be the owner of said bus for the purposes of this article.

(d) Extent of privileges: Upon the registration of a fleet in a contracting State pursuant to this article, each bus in the fleet may be operated in both interstate and intrastate operations in such State (except as provided in article III(e)).

(e) Application for proration: The application for proration of registration shall be made in each contracting State upon substantially the application forms and supplements authorized by joint action of the administrators of the contracting States.

(f) Issuance of identification: Upon registration of a fleet, the State which is the base State of a particular bus of the fleet shall issue the required license plates and registration card for such bus and each contracting State in which the fleet of which such bus is a part operates shall issue a special identification identifying such bus as a part of a fleet which has fully complied with the registration requirements of such State. The required license plates, registration cards, and identification shall be appropriately displayed in the manner required by or pursuant to the laws of each respective State.

(g) Additions to fleet: If any bus is added to a prorated fleet after the filing of the original application, the owner shall file a suplemental application. The owner shall register such bus in each contracting State in like manner as provided for buses listed in an original application and the registration fee payable shall be determined on the mileage proportion used to determine the registration fees payable for buses registered under the original application.

(h) Withdrawals from fleet: If any bus is withdrawn from a prorated fleet during the period for which it is registered or identified, the owner shall notify the administrator of each State in which it is registered or identified of such withdrawal and shall return the plates and registration card or identification as may be required by or pursuant to the laws of the respective States.

(i) Audits: The Administrator of each contracting State shall, within the statutory authority of such administrator, make any information obtained upon an audit of records of any applicant for proration of registration available to the administrators of the other contracting States.

(j) Errors in registration: If it is determined by the administrator of a contracting State, as a result of such audits or otherwise, that an improper fee has been paid his State, or errors in registration found, the administrator may require the fleet owner to make the necessary corrections in the registration of his fleet and payment of fees.

ARTICLE V.—RECIPROCITY

(a) Grant of reciprocity: Each of the contracting States grants reciprocity as provided in this article.

(b) Applicability: The provisions of this agreement with respect to reciprocity shall apply only to a bus properly registered in the base State of the bus, which State must be a contracting State.

(c) Nonapplicability to fleet buses: The reciprocity granted pursuant to this article shall not apply to a bus which is entitled to be registered or identified as part of a prorated fleet.

(d) Extent of reciprocity: The reciprocity granted pursuant to this article shall permit the interstate operation of a bus and intrastate operation which is incidental to a trip of such bus involving interstate operation.

(e) Other agreements: Nothing in this agreement shall be construed to prohibit any of the contracting States from entering into separate agreements with each other for the granting of temporary permits for the intrastate operation of vehicles registered in the other State; nor to prevent any of the contracting States from entering into agreements to grant reciprocity for intrastate operation within any zone or zones agreed upon by the States.

ARTICLE VI.—WITHDRAWAL OR REVOCATION

Any contracting State may withdraw from this agreement upon thirty days' written notice to each other contracting State, which notice shall be given only after the repeal of this agreement by the legislature of such State, if adoption was by legislative act, or after renunciation by the appropriate administrative official of such contracting State if the laws thereof empower him so to renounce.

ARTICLE VII.—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any State participating herein, the compact shall remain in full force and effect as to the remaining party States and in full force and effect as to the State affected as to all severable matters.

SEC. 202. The Board of Commissioners of the District of Columbia shall have the power to make such exemptions from the coverage of the agreement as may be appropriate and to make such changes in methods for the reporting of any information required to be furnished to the District of Columbia pursuant to the agreement as, in its judgment, shall be suitable: *Provided,* That any such exemptions or changes shall not be contrary to the purposes set forth in article I of the agreement and shall be made in order to permit the continuance of uniformity of practice among the contracting States with respect to buses.

SEC. 203. The Board of Commissioners of the District of Columbia shall enter into the agreement authorized by

section 201 of this title without further action on the part of the Congress, and issue such rules and regulations as may be necessary for the implementation of such agreement. Notwithstanding any provision of this Act, nothing herein shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners (other than the entry into a compact authorized by this Act) or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan.

SEC. 204. All provisions of law applicable to the District of Columbia shall, to the extent they are inconsistent with the agreement authorized by this title, be inapplicable to the taxation and registration of buses in the District of Columbia during such time as the District is a party to such agreement.

SEC. 205. Unless otherwise provided in any statute withdrawing the District of Columbia from participation in the agreement, the Board of Commissioners of the District of Columbia shall be the officer to give notice of withdrawal therefrom.

SEC. 206. The right to alter, amend, or repeal this title is expressly reserved. (Apr. 14, 1965, 79 Stat. 58, Pub. L. 89–11, §§ 101 to 206).

CROSS REFERENCES

Disposition of taxes, see § 40–103.

Provisions transferring parking funds to special account in highway fund, see note to § 40–808.

Refunds, see § 47–1910.

NOTES TO DECISIONS

Special assessment

A special repaving assessment under acts authorizing assessments on frontage basis was invalid. *Reichelderfer* v. *Hechinger* (1932, 57 F. 2d 943, 61 App. D. C. 104).

§ 47–1901a. Repealed. July 16, 1947, 61 Stat. 360, ch. 258, Art. III, § 2, eff. Aug. 1, 1947.

Section, act Dec. 26, 1941, 55 Stat. 871, ch. 635, § 1, provided for temporary increase in rate of one cent per gallon from July 1, 1942, to June 30, 1951.

§ 47–1901b. Repealed. June 4, 1952, 66 Stat. 100, ch. 366, § 3.

Section, act July 16, 1947, 61 Stat. 359, Art. III, § 1, provided for temporary increase in rate to 4 cents per gallon from August 1, 1947 to June 30, 1952.

EFFECTIVE DATE OF REPEAL

Repeal of section effective on the first day of the first month following its enactment, but not prior to July 1, 1952, see section 4 of act June 4, 1952, set out as a note under § 47–1901.

§ 47–1902. Definitions.

As used in sections 47–1901 to 47–1916—

(a) The term "motor vehicle" means all vehicles propelled by internal-combustion engines, electricity, or steam, except traction engines, road rollers, and vehicles propelled only upon rails and tracks.

(b) The term "motor vehicle fuels" means gasoline and other volatile and inflammable liquid fuels produced or compounded for the purpose of operating or propelling internal-combustion engines: *Provided,* That kerosene shall not be considered to be a motor-vehicle fuel in the meaning of this chapter.

(c) The term "importer" means any person who brings into, or who produces, refines, manufactures, or compounds, in the District of Columbia motor-vehicle fuel to be used by him or to be sold, kept for sale, bartered, delivered for value, or exchanged for goods. The term "distributor" means any person other than an importer, who purchases motor-vehicle fuel for sale to another person for resale.

(d) The term "person" includes individual, partnership, corporation, and association.

(e) The term "commissioners" means the Board of Commissioners of the District of Columbia.

(f) The term "highways" means the right of way of streets, avenues, and roads, bridges, viaducts, underpasses, drainage structures, guard rails, signs, signals, curbing, and dikes, fills, and retaining walls necessary to support or protect the highway.

(g) The term "construction" means the supervising, inspecting, actual building, and all expenses incidental to the construction of a highway, including the acquisition of the necessary rights of way.

(h) The term "reconstruction" means a widening or a rebuilding of the highway or any portion thereof and of sufficient width and strength to care adequately for traffic needs, including all expenses incidental to the reconstruction of a highway and the acquisition of the necessary rights of way.

(i) The term "maintenance" means the constant making of needed repairs to preserve the highway.

(j) The term "improvement" means the betterment of a highway by construction, reconstruction, or resurfacing. (Apr. 23, 1924, 43 Stat. 106, ch. 131, § 2; Aug. 17, 1937, 50 Stat. 677, ch. 690, title III, § 2; May 16, 1938, 52 Stat. 358, ch. 223, § 3.)

AMENDMENTS

1938—Act May 16, 1938, substituted "signals," for "and protective structures in connection with highways" in subsec. (f), and added subsec. (j).

1937—Act Aug. 17, 1937, deleted from subsection (c) the words "or otherwise disposed of by him or to be used by him in a motor vehicle operated for hire or for commercial purposes" and inserted in lieu thereof the words which follow the word "sold" to the end of the subsection, and added subsecs. (f), (g), (h), and (i).

NOTES TO DECISIONS

Gasoline imported by United States

United States is not an "importer" or "person" within the meaning of the act. *District of Columbia* v. *American Oil Co.* (1930, 39 F. 2d 510, 59 App. D. C. 260).

§ 47–1903. Importers—License—Application for—Contents—Fee—Bond—Issuance—Revocation.

(a) No person shall bring into, or produce, refine, manufacture, or compound in the District of Columbia motor-vehicle fuel to be used by him or to be sold, bartered, delivered for value, or exchanged for goods, and no person shall engage in the business of importer of motor-vehicle fuels in the District of Columbia unless such person is the holder of an unrevoked license authorizing him so to do issued by the commissioners. The application for such license shall contain (1) the name of the applicant; (2) the name under which the applicant intends to transact business and the name and place of business of the local representative; (3) the location of the applicant's place of business; (4) the date such business was established; and (5) any other information required under regulations promulgated by the commissioners of the District of Columbia. In case the applicant is a corporation, the application shall also contain the corporate name, place, and time of incorporation, and the names of the officers and directors, and, if a foreign corporation, the name of its resident general agent, and in case the applicant is a partnership the names and addresses of the

several persons constituting the partnership. Such application shall be signed and sworn to by the owner of such business, if owned by an individual; by the partners, if owned by a partnership; or by the president and secretary of the corporation, or by its manager or resident general agent, if owned by a corporation. At the time of applying for such license the applicant shall pay to the collector of taxes as an annual license fee the sum of $5 and shall file with the commissioners of the District of Columbia a bond in the form to be prescribed by said commissioners, in the approximate sum of three times the average monthly motor-fuel tax due from said such importer during the next preceding twelve months, or estimated to be so due in the next succeeding twelve months, to be executed by a surety company duly licensed to do business under the laws of the District of Columbia, payable to the District of Columbia and conditioned upon the prompt payment of any and all taxes and penalties, levied and imposed in sections 47–1901 and 47–1903 to the collector of taxes of the District of Columbia, and generally upon faithful compliance with the terms of sections 47–1901 to 47–1916 by such importer: *Provided,* That in no case shall such bond be less than $5,000 nor more than $20,000.

(b) Upon filing such application and bond and the payment of the fee, the assessor shall issue to such applicant a license which shall authorize the applicant to engage in the business of importer of motor-vehicle fuels for one year unless such license is sooner revoked.

(c) If any importer fails, refuses, or neglects to file the monthly report within the time required by section 47–1904, or to pay the tax within the time required by section 47–1906 there shall be added to such tax an amount equal to the sum of 20 per centum of the amount of such tax, and the assessor shall promptly notify the importer and the bonding company by notice sent by registered mail or by certified mail to such importer requiring him to show cause why the license should not be revoked. If in the opinion of the assessor the importer fails within ten days after the mailing of such notice to show that failure to file the monthly report or to pay the tax as the case may be within the time required was due to accident or justifiable oversight, the assessor shall forthwith revoke such license. Any importer whose license has been revoked shall not be issued another license for twelve months following the date of said revocation.

(d) Before any person whose license has been revoked may obtain another license to engage in the business of importer of motor-vehicle fuels, such person shall pay all delinquent taxes and penalties due hereunder remaining unpaid by him. (Apr. 23, 1924, 43 Stat. 107, ch. 131, § 3; Aug. 17, 1937, 50 Stat. 677, ch. 690, title III, § 3; June 11, 1960, 74 Stat. 203, Pub. L. 86–507, § 1(55).)

AMENDMENTS

1960—Act June 11, 1960, inserted the words "or by certified mail" following "registered mail."

1937—Act Aug. 17, 1937, amended section generally.

CROSS REFERENCE

Certified mail receipts as prima facie evidence of delivery, see § 14–506.

NOTES TO DECISIONS

Application for license

Under this section requiring foreign corporation applying for license to engage in district in business of importer of motor fuels to state in application the name of its resident general agent, designation of resident general agent is a prerequisite to engaging in business of importing fuels and where foreign importer, in application for license, stated that it had no general agent but gave name of limited agent, Commissioners properly declined to grant license. *Cities Service Oil Co.* v. *McLaughlin, Commissioner, etc.* (D.C.D.C. 1960, 189 F. Supp. 227).

Constitutionality

Requirement that foreign corporation applying for license to import motor fuels into District of Columbia state on application name of its resident general agent was clearly connected with granting of license and requirement was entirely within legislative discretion and was not unconstitutional on ground that it was arbitrary, unreasonable, and unnecessary. *Cities Service Oil Co.* v. *McLaughlin, Commissioner, etc.* (D.C.D.C. 1960, 189 F. Supp. 227).

Resident general agent

Foreign corporation was not entitled to a license to import motor-vehicle fuel into the District of Columbia where it failed to meet the qualifications of the statute and police regulation requiring an importer qualifying for a license to designate a local representative and to maintain a local office or place of business within the District. *Cities Service Oil Company* v. *W. N. Tobriner et al.* (1962, 306 F. 2d 752, 113 U.S. App. D.C. 145).

District of Columbia motor fuel tax law and police regulation required that foreign corporation acting thereunder designate local representative, but did not require designation of resident general agent by corporation which maintained no such agent. *Cities Service Oil Co.* v. *R. E. McLaughlin, Commissioner, etc.* (1961, 292 F. 2d 759, 110 U.S. App. D.C. 266).

Sale to United States

Congress did not intend to permit the United States to import gasoline, tax-free, and yet impose a tax if delivery to the United States by the vendor should be made in the District instead of across the line in Virginia. *District of Columbia* v. *American Oil Co.* (1930, 39 F. 2d 510, 59 App. D. C. 260).

§ 47–1904. Monthly report to assessor of amount of fuel sold.

Each importer engaged in the District of Columbia in the sale or other disposition or use of motor-vehicle fuel shall render to the assessor of the District of Columbia, on or before the twenty-fifth day of each calendar month, on forms prescribed, prepared, and furnished by the said assessor, a sworn report of the total number of gallons of motor-vehicle fuel within the District of Columbia sold or otherwise disposed of by such importer or used by him in a motor vehicle operated for hire or for commercial purposes, and of the number of gallons of such fuel so sold or otherwise disposed of for exportation from and resale without the District of Columbia, during the preceding calendar month. Such report shall be sworn to by one of the principal officers in case of a domestic corporation, by the resident general agent, or attorney in fact, or by a chief accountant or officer in case of a foreign corporation, or by the managing agent or owner in case of a partnership or association. (Apr. 23, 1924, 43 Stat. 107, ch. 131, § 4; Dec. 26, 1941, 55 Stat. 871, ch. 635, § 2.)

AMENDMENT

1941—Act Dec. 26, 1941, substituted "twenty-fifth" for "last."

§ 47–1905. Invoices to be rendered by importers to all purchasers except in cases of retail sales.

Invoices shall be rendered by importers and distributors to all purchasers from them of motor-vehicle fuel within the District of Columbia except in case of retail sales. Said invoices shall contain a statement, printed thereon in a conspicuous place, that the liability to the District of Columbia for the tax herein imposed has been assumed by a licensed importer named in said statement and that the importer has paid the tax or will pay it on or before the twenty-fifth day of the calendar month next succeeding the purchase. (Apr. 23, 1924, 43 Stat. 107, ch. 131, § 5; Aug. 17, 1937, 50 Stat. 678, ch. 690, title III, § 4; Dec. 26, 1941, 55 Stat. 871, ch. 635, § 2.)

AMENDMENTS

1941—Act Dec. 26, 1941, substituted "twenty-fifth" for "last."

1937—Act Aug. 17, 1937, inserted the words "and distributors" after "importers," and "by a licensed importer named in said statement" after "assumed."

§ 47–1906. Tax to be paid to collector not later than twenty-fifth day of next succeeding calendar month.

The tax in respect to motor-vehicle fuel so sold or otherwise disposed of or used in any calendar month shall be paid by the importer on or before the twenty-fifth day of the next succeeding calendar month to the collector of taxes of the District of Columbia, who shall issue a receipt to the importer therefor. (Apr. 23, 1924, 43 Stat. 107, ch. 131, § 6; Dec. 26, 1941, 55 Stat. 871, ch. 635, § 2.)

AMENDMENTS

1941—Act Dec. 26, 1941, substituted "twenty-fifth" for "last."

§ 47–1907. Importer's records of transactions subject to inspection of assessor and collector.

The records of all purchases, receipts, sales, other dispositions, and uses of motor-vehicle fuel of every importer, distributor, or dealer shall, at all times during the business hours of the day, be subject to inspection by the assessor and the collector of taxes of the District of Columbia, or by their duly authorized agents or by any other agent duly authorized by the Commissioners to make such inspection. (Apr. 23, 1924, 43 Stat. 107, ch. 131, § 7; Aug. 17, 1937, 50 Stat. 678, ch. 690, title III, § 5.)

AMENDMENT

1937—Act. Aug. 17, 1937, added the words "distributor, or dealer."

§ 47–1908. Penalty for accepting fuel from importer without an itemized sale statement.

It shall be unlawful for any person to accept or receive from any importer or distributor, except in cases of retail sales, any motor-vehicle fuel unless the statement provided for in section 47–1905 appears upon the invoice for the fuel. If any such motor-vehicle fuel is received and accepted by any person upon the invoice of which said statement does not appear, such person shall pay to the collector of taxes the tax herein imposed. (Apr. 23, 1924, 43 Stat. 108, ch. 131, § 8; Aug. 17, 1937, 50 Stat. 679, ch. 690, title III, § 6.)

AMENDMENT

1937—Act Aug. 17, 1937, added the words "or distributor" and deleted following the word "imposed" the words "or be liable to the District of Columbia for double the amount of the said tax, which amount may be recovered by civil suit or action in any court of competent jurisdiction."

§ 47–1909. Fuel exported from District of Columbia exempted from taxation.

No tax on motor-vehicle fuels exported or sold for exportation from the District of Columbia to any other jurisdiction or nation shall be imposed. (Apr. 23, 1924, 43 Stat. 108, ch. 131, § 9.)

§ 47–1910. Motor fuel used for any purpose other than motor vehicle—Refund of tax payment.

Any person who purchases any motor-vehicle fuel in the District of Columbia to be used for operating or propelling any stationary gas engine, tractor used for agricultural purposes, motor-boat, aeroplane, or aircraft of any character, or for cleaning or dyeing, or for any other purpose other than use in a motor vehicle operated, or intended to be operated, in whole or in part upon any of the public highways of the District of Columbia, on which motor-vehicle fuel the tax imposed by sections 47–1901 to 47–1916 shall have been paid, shall be refunded the amount of such tax so paid by the importer, upon presenting to the collector of taxes of the District of Columbia a sworn statement accompanied by the invoices showing such purchase, which statement shall set forth the total amount of such motor-vehicle fuel so purchased and used by such consumer other than in motor vehicles operated, or intended to be operated, on any of the public highways of the District of Columbia. Such refunds shall be made by check by the collector of taxes from moneys paid for taxes on motor-vehicle fuels and retained on deposit as hereinafter in this section provided. For the purpose of such refunds the collector of taxes is authorized at all times to retain in a special fund on deposit in a Government depositary moneys paid him for such taxes, the total amount so retained on deposit not to exceed $1,000 at any one time. Applications for refunds as provided herein, must be filed with the collector of taxes of the District of Columbia within sixty days from the date of purchase: *Provided,* That before any refund shall be made the applicant shall furnish to the collector of taxes of the District of Columbia satisfactory evidence by sworn statement of the exempted use of such fuel purchased by him. (Apr. 23, 1924, 43 Stat. 108, ch. 131, § 10; Aug. 11, 1939, 53 Stat. 1409, ch. 692.)

AMENDMENT

1939—Act Aug. 11, 1939, substituted "sixty days" for "thirty days."

CROSS REFERENCE

Refund of taxes, see § 47–1016 and notes.

§ 47–1911. Violations—Penalty.

Any person violating any provision of sections 47–1903 to 47–1906 inclusive, or section 47–1908, or refusing or obstructing inspection under section 47–1907, or falsely making any statement or report required by sections 47–1901 to 47–1916, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 nor more than $500 or by imprisonment for not more than one year, or by both such fine and imprisonment. (Apr. 23, 1924, 43 Stat. 108, ch. 131, § 11; Aug. 17, 1937, 50 Stat. 679, ch. 690, title III, § 7.)

AMENDMENT

1937—Act Aug. 17, 1937, included violations of section 47–1908, and deleted the words "Any person who fails to pay any tax upon motor-vehicle fuels imposed by this act shall be liable to the District of Columbia for a penalty equal to twice the amount of such tax. Such penalty may be collected in a civil suit in any court of competent jurisdiction."

§ 47–1912. Tax on fuel sold by United States agency in the District of Columbia.

When under authority of law gasoline or other motor-vehicle fuel is sold by an agency of the United States within the District of Columbia, for use in privately owned vehicles, such agency of the United States shall, by agreement with the Commissioners of the District of Columbia, arrange for the collection of the tax of 7 cents per gallon herein authorized to be imposed, and for accounting to the collector of taxes of the District of Columbia for the proceeds of such tax collections. (Apr. 23, 1924, 43 Stat. 109, ch. 131, § 14; June 4, 1952, 66 Stat. 100, ch. 366, § 2; May 18, 1954, 68 Stat. 117, ch. 218, title XI, § 1102; Sept. 30, 1966, 80 Stat. 858, Pub. L. 89–610, title VIII, § 802.)

AMENDMENTS

1966—Act Sept. 30, 1966, increased the tax on motor vehicle fuel from six to seven cents per gallon.

1954—Act May 18, 1954, increased the tax on motor-vehicle fuel from 5 to 6 cents a gallon.

1952—Act June 4, 1952, increased the tax on gasoline or other motor-vehicle fuel from 2 to 5 cents per gallon.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act Sept. 30, 1966, as effective on the first day of the first month which begins more than thirty days after Sept. 30, 1966, see § 703 of such act, set out as a note under § 47–1901.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act May 18, 1954, effective on the first day of the first month following May 18, 1954, see section 1103 of act May 18, 1954, set out as a note under § 47–1901.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act June 4, 1952, effective on the first day of the first month following June 4, 1952, see section 4 of act June 4, 1952, set out as a note under § 47–1901.

CONSTRUCTION; SEVERABILITY OF PROVISIONS; RULES AND REGULATIONS

For construction of act Sept. 30, 1966, Pub. L. 89–610, amending this section, severability of provisions with respect thereto, and authority to make rules and regulations to carry out provisions thereof, see §§ 1003–1005 of such act, set out as a note under § 25–124.

§ 47–1913. Violations to be prosecuted by corporation counsel.

All prosecution for violations of the provisions of sections 47–1901 to 47–1906 or regulations prescribed thereunder may be in the District of Columbia Court of General Sessions, upon information filed by the corporation counsel of the District of Columbia or any of his assistants; and all suits for the collection of any tax or penalty under sections 47–1901 to 47–1906 or such regulations shall be instituted by the corporation counsel or any of his assistants. (Apr. 23, 1924, 43 Stat. 109, ch. 131, § 15; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia' was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 47–1914. Construction—Not to affect public hackers.

Nothing in this chapter shall be construed in any wise to affect the provisions of sections 47–2331 to 47–2333. (Apr. 23, 1924, 43 Stat. 109, ch. 131, § 16.)

CODIFICATION

The paragraphs of act July 1, 1902, ch. 1352, referred to, were amended by act July 1, 1932, 47 Stat. 550, ch. 366. Paragraphs 11, 13, and 14 of act July 1, 1902, contain subject matter closely akin to paragraphs 31, 32, and 33 of act July 1, 1932, which appear in this Code, as they are now amended, as §§ 47–2331 to 47–2333.

§ 47–1915. Construction—Personal tax laws not affected.

Nothing in sections 47–1901 to 47–1916 shall be construed as affecting the application to motor vehicles of the personal-property tax in force on May 3, 1924, which personal-property tax shall continue to be levied, assessed, and collected on motor vehicles. (Apr. 23. 1924, 43 Stat. 110, ch. 131, § 17.)

NOTES TO DECISIONS

Construction

This act should be considered as a whole, and, if possible, given an interpretation that will harmonize and accord full force and effect to all of its provisions. *District of Columbia* v. *Bailey* (1927, 18 F. 2d 367, 57 App. D. C. 151).

§ 47–1916. Commissioners to make necessary regulations.

The commissioners may make such regulations as in their judgment are necessary for the administration of sections 47–1901 to 47–1916 and may affix thereto such fines and penalties as in their judgment are necessary to enforce such regulations (in cases in which a penalty is not otherwise provided by law). (Apr. 23, 1924, 43 Stat. 110, ch. 131, § 18.)

NOTES TO DECISIONS

Resident general agent

Foreign corporation was not entitled to a license to import motor-vehicle fuel into the District of Columbia where it failed to meet the qualifications of the statute and police regulation requiring an importer qualifying for a license to designate a local representative and to maintain a local office or place of business within the District. *Cities Service Oil Company* v. *W. N. Tobriner et al.* (1962, 306 F. 2d 752, 113 U.S. App. D.C. 145).

District of Columbia motor fuel tax law and police regulation required that foreign corporation acting thereunder designate local representative, but did not require designation of resident general agent by corporation which maintained no such agent. *Cities Service Oil Co.* v. *R. E. McLaughlin, Commissioner, etc.* (1961, 292 F. 2d 759, 110 U.S. App. D.C. 266).

§ 47–1917. Street paving—Assessments.

Assessments in accordance with existing law shall be made for paving and repaving roadways, where such roadways are paved or repaved, with funds derived from the collection of the tax on motor-vehicle fuels. (Mar. 3, 1926, 44 Stat. 167, ch. 44, § 1.)

§ 47–1918. Revenue and disbursements.

All moneys derived from assessments for paving and repaving roadways under provisions of existing

law arising from the expenditure of the fund created by the tax on motor-vehicle fuels, shall be paid into the treasury of the United States and be credited to and constitute a part of said fund and shall thereafter be available for appropriation in the same manner as the proceeds of the tax on motor-vehicle fuels. (June 7, 1924, 43 Stat. 550, ch. 302.)

NOTES TO DECISIONS

Provided by existing law

Term "provided by existing law" should be held to refer to the provision of the statute relating to the paving, and not to the assumed principle of common law relating to the relocation of the tracks. *District of Columbia* v. *Georgetown & T. R. Co.* (1930, 41 F. 2d 424, 59 App. D. C. 335).

§ 47–1919. Continuation of uncompleted projects at end of fiscal year.

Any projects or portions of projects chargeable to the gasoline-tax road and street improvement fund during the fiscal year 1925 and subsequent fiscal years and uncompleted at the close of those years shall be a continuing charge upon the fund until completed and shall, except in so far as conditions beyond the control of the commissioners prevent, be given priority over projects subsequently made a charge upon such fund. (Mar. 3, 1925, 43 Stat. 1226, ch. 477.)

NOTES TO DECISIONS

Invalidity

A special repaving assessment under acts authorizing assessments on frontage basis was invalid. *Reichelderfer* v. *Hechinger* (1932, 57 F. 2d 943, 61 App. D. C. 104).

Chapter 20.—DOG TAX

Sec.
47–2001. Dog tax.
47–2002. Collector to furnish metallic tag.
47–2003. Impounding of dogs found at large.
47–2004. Dogs wearing tags regarded as personal property—Damages for injuring or destruction of same.
47–2005. Owner of dog liable to civil action for damages caused by the dog.
47–2006. Dogs must wear collar with owner's name and tag.
47–2007. Removing dog's collar, insignia, or tag—Penalty.
47–2008. Poundmaster given power to make arrest.

§ 47–2001. Dog tax.

There shall be levied a tax of $3 each per annum upon all dogs owned or kept in the District of Columbia; said tax to be collected as other taxes in said District are or may be collected. (June 19, 1878, 20 Stat. 173, ch. 323, § 1; July 5, 1945, 59 Stat. 409, ch. 267, § 1.)

AMENDMENT

1945—Act July 5, 1945, increased the tax from $2 to $3.

TRANSFER OF FUNCTIONS

Reorganization Order No. 20 dated Nov. 10, 1952, transferred the sale of dog licenses (Dog Tax) from the Collector of Taxes to the Superintendent of Licenses. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and the plan are set out in the Appendix to Title 1, Administration.

§ 47–2002. Collector to furnish metallic tag.

It shall be the duty of the collector of taxes, upon receipt of said tax, to give to the person paying the same, for each dog so paid for, a suitable metallic tag, stamped with the year, showing that said tax has been duly paid; and he shall keep a record of all such payments, with the date thereof, and the name, color, and sex of such dog, and the name of the person claiming any dog so paid for; and a copy of such record, certified under the hand and official seal of the said collector, which shall be given to any person demanding the same, upon payment of twenty-five cents therefor, shall be prima-facie evidence of such payment in any court of the District of Columbia. (June 19, 1878, 20 Stat. 173, ch. 323, § 2.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 20 dated Nov. 10, 1952, transferred the sale of dog licenses (Dog Tax) from the Collector of Taxes to the Superintendent of Licenses. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

§ 47–2003. Impounding of dogs found at large.

The poundmaster of the District of Columbia shall, during the entire year, seize all dogs found running at large, and shall impound the same; and if within forty-eight hours the same are not redeemed by the owners thereof by the payment of two dollars they shall be sold or destroyed, as the poundmaster may deem advisable; and any sale made by virtue hereof shall be deemed valid to all intents and purposes in all courts of the District of Columbia: *Provided,* That no owner, keeper, or purchaser, shall be permitted to redeem any dog seized and impounded as aforesaid, nor shall the Poundmaster deliver any dog to an owner, keeper, or purchaser, unless such owner, keeper, or purchaser shall first satisfy the Poundmaster that he has obtained for such dog the tax tag provided for in section 47–2002, and if at such time there shall be in force a proclamation of the Commissioners requiring dogs to be vaccinated against rabies, such owner, keeper, or purchaser shall also satisfy the Poundmaster that such dog has been vaccinated against rabies in accordance with such proclamation. (June 19, 1878, 20 Stat. 173, ch. 323, § 3; June 30, 1902, 32 Stat. 547, ch. 1332; July 5, 1945, 59 Stat. 409, ch. 267, § 2; Sept. 13, 1961, 75 Stat. 498, Pub. L. 87–227, § 2(1).)

AMENDMENTS

1961—Section 2(1) of act Sept. 13, 1961, struck out the following: "without the tax tag issued by the collector aforesaid attached, and all female dogs in heat found running at large". This makes it permissible for the poundmaster to seize all dogs running at large.

1945—Act July 5, 1945, added proviso.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 4 of act Sept. 13, 1961, makes this amendment "effective thirty days after the date of its approval" [Sept. 13, 1961].

TRANSFER OF FUNCTIONS

Reorganization Order No. 52 of the Board of Commissioners dated June 30, 1953, combined with Reorganization Order No. 57, and redesignated Organization Order No. 141, dated Aug. 20, 1964, transferred to the Metropolitan Police Department under the direction and control of the Chief of Police, all functions under the previously existing District of Columbia Pound, including the duties, powers, and authorities of all officers and employees assigned thereto. The order established the position of Poundmaster to be responsible for the performance of those functions under the direction and control of the Chief of Police. The order abolished the previously existing District of Columbia Pound. This order was issued pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCE

General provisions concerning animals running at large, see §§ 1–224b, 1–230.

NOTES TO DECISIONS

Effect of amendment

The amendment of this chapter without changing the particular provision that had previously been construed by the court does not modify the judicial interpretation previously given the act, as it will be presumed that such construction was in accordance with the legislative intent. *Bardwell* v. *Petty* (1923, 286 F. 772, 52 App. D. C. 310).

§ 47–2004. Dogs wearing tags regarded as personal property—Damages for injuring or destruction of same.

Any dog wearing the tax tag hereinbefore provided for shall be regarded as personal property in all the courts of said District, and any person injuring or destroying the same shall be liable to a civil action for damages, which, upon proof of said injuring or killing, may be awarded in a sum equal to the value usually put upon such property by persons buying and selling the same, subject to such modifications as the particular circumstances of the case may make proper. (June 19, 1878, 20 Stat. 174, ch. 323, § 4; June 30, 1902, 32 Stat. 547, ch. 1332; Sept. 13, 1961, 75 Stat. 498, Pub. L. 87–227, § 2(2).)

AMENDMENT

1961—Section 2(2) of act Sept. 13, 1961, amended the section by striking out "Any dog wearing the tax tag hereinbefore provided for, except female dogs in heat, shall be permitted to run at large within the District of Columbia, and any" and inserting in lieu thereof "Any". This eliminates provision permitting licensed dogs to run at large.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 4 of act Sept. 13, 1961, makes this amendment "effective thirty days after the date of its approval" [Sept 13, 1961]

NOTES TO DECISIONS

Absence of tag

This section does not change the common law rule to extent that any dog not wearing tax tag is not "personal property" and that anyone injuring the same is not liable in damages. *Scharfeld* v. *Richardson* (1943, 133 F. 2d 340, 76 U. S. App. D. C. 378, 145 A. L. R. 980).

The owner of dog which had not been provided with a tax tag as required by this chapter could recover for the loss of the dog as result of a fatal assault perpetrated by another dog whose owner had been apprised of its malevolent propensities. *Id.*

Common law

At common law, a dog is "personal property" and its owner may recover for a willful or negligent injury thereto. *Scharfeld* v. *Richardson* (1943, 133 F. 2d 340, 76 U. S. App. D. C. 378, 145 A. L. R. 980).

Construction

This section and § 47–2004 must be construed together. *Scharfeld* v. *Richardson* (1943, 133 F. 2d 340, 70 U. S. App. D. C. 378, 145 A. L. R. 980).

§ 47–2005. Owner of dog liable to civil action for damages caused by the dog.

Any person owning any dog so recorded in the collector's office shall be liable in a civil action for any damage done by said dog to the full amount of the injury inflicted. (June 19, 1878, 20 Stat. 174, ch. 323, § 5.)

NOTES TO DECISIONS

Common law

At common law, an owner may be liable in civil action for damage caused by his dog. *Scharfeld* v. *Richardson* (1943, 133 F. 2d 340, 76 U. S. App. D. C. 376, 145 A. L. R. 980).

Construction

This section and § 47–2005 are to be construed together. *Scharfeld* v. *Richardson* (1943, 133 F. 2d 340, 76 U. S. App. D. C. 378, 145 A. L. R. 980).

§ 47–2006. Dogs must wear collar with owner's name and tag.

It shall be the duty of any person owning or possessing a dog to place, or cause to be placed and kept, around the neck of such dog, a collar, on which shall be marked and engraved, in legible and durable characters, the name of the owner or possessor, and the letters "D. C.," and to which collar must be attached the insignia or tax-tag furnished by the District tax-collector, in accordance with sections 47–2001, 47–2002, under the penalty of not less than five nor more than ten dollars; and if any person shall put, or cause to be put, a collar, with the insignia or tax-tag, around the neck of any dog owned or possessed by any person or persons residing in the District, without having obtained a license for keeping such animal, he, she, or they shall forfeit and pay the sum of not less than five nor more than ten dollars for each and every offense. (June 19, 1878, 20 Stat. 174, ch. 323, § 6.)

§ 47–2007. Removing dog's collar, insignia, or tag—Penalty.

Any person who shall remove, or cause to be removed, the collar and insignia or tax-tag from the neck of any dog, or entice any properly licensed dog into any inclosure for the purpose of taking off its collar or insignia, or shall for such purpose decoy or entice any animal out of the inclosure or house of its owner or possessor, or shall seize or molest any dog while held or led by any person, or shall bring any dog into the District for the purpose of taking up and killing the same, shall forfeit and pay a sum of not more than twenty dollars. (June 19, 1878, 20 Stat. 174, ch. 323, § 8.)

§ 47–2008. Poundmaster given power to make arrest.

In order to carry out properly and effectively the duties imposed upon him by Congress the poundmaster is hereby given authority as a special police officer of the Metropolitan police department of the District of Columbia, with authority to make arrests in the performance of his duty. (June 6, 1930, 46 Stat. 522, ch. 411, § 1.)

TRANSFER OF FUNCTIONS

Transfer of functions to Metropolitan Police Department, under direction and control of chief of police, see note under § 47–2003.

CODIFICATION

This section as enacted contained the clause, "and he shall receive a salary at the rate of $3,080 per annum." These provisions have been omitted because subsequent appropriation acts have provided a different salary.

Chapter 21.—PRIVATE EMPLOYMENT AGENCY LICENSES

Sec.

47–2101. Employment agencies—License required—Definitions.
47–2102. Bond.
47–2103. Registers.
47–2104. Receipts.
47–2105. Location of place in which conducted.
47–2106. Application of minor.
47–2107. Inspection.

Sec.
47–2108. False information.
47–2109. Exceptions from license requirements.
47–2110. Employment contract.
47–2111. Character of employer—Fraud.

§ 47–2101. Employment agencies—License required—Definitions.

It shall be unlawful for any person to open, keep, operate, maintain, or carry on any private employment agency without first having obtained a license from the District of Columbia so to do. The fee for such license shall be $100 per annum. Any license may be denied, revoked, or suspended for cause by the said commissioners. A person whose application for a license is denied, or whose license is revoked or suspended by the commissioners may obtain a review of the action of the commissioners in the District of Columbia Court of Appeals in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code.

(a) The term "private employment agency" means any business, enterprise, or undertaking that procures, offers to procure, promises to procure, attempts to procure, or aids in procuring, either directly or indirectly, help or employment for another, for any fee, remuneration, profit, or any consideration whatsoever, promises, paid, or received therefor, either directly or indirectly. It shall also include domestic, commercial, clerical, executive, professional, and general employment bureaus, and shall apply to theatrical employment agencies and nurses' registry conducted for profit or gain.

(a–1) The term "nurses' registry" means and includes the business of conducting an agency, bureau, office, or other place for the purpose of procuring, offering to procure, promising to procure, attempting to procure, or aiding in procuring employment or engagements for nurses of any kind.

(a–2) The term "theatrical employment agency" includes the business of conducting any agency, bureau, office, or other place providing engagements for circus, vaudeville, theatrical, and other entertainments or exhibitions or performances, or of giving information as to where such engagements may be procured or provided, but does not include the business of managing the artists or the attraction constituting such performances, where such business only incidentally involves the seeking of employment therefor.

(a–3) The term "applicant for employment" means any person seeking work, employment, or engagement of any character.

(a–4) The term "applicant for help" means any person seeking help, employees, or performers.

The singular shall include the plural and the masculine the feminine. (July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 42; July 1, 1932, 47 Stat. 559, ch. 366; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; Dec. 23, 1963, 77 Stat. 617, Pub. L. 88–241, § 10.)

CODIFICATION

"The Municipal Court of Appeals for the District of Columbia" was substituted for "any justice of the court of appeals" to conform to the provisions of act Aug. 31, 1954, which vested exclusive jurisdiction to review action of the Commissioners in revoking, suspending or denying a license under this section in the Municipal Court of Appeals for the District of Columbia. See § 11–742(a)(5).

This chapter sets out that part of the 1932 License Law that deals with employment agencies. Penalties for violating §§ 47–2101 to 47–2109 are in § 47–2347.

AMENDMENTS

1963—Section 10 of act, Dec. 23, 1963, amended the first paragraph by striking out the colon preceding the proviso and changing it to a period and by striking out everything in the paragraph beginning with the word "Provided" and inserting in lieu thereof the matter beginning with the words, "A person whose".

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "Proprietors or owners of intelligence offices, information bureaus, registries, or employment offices, by whatsoever name called, shall pay a license tax of ten dollars per annum."

CHANGE OF NAME

Act July 8, 1963, § 6, substituted "District of Columbia Court of Appeals" for "Municipal Court of Appeals for the District of Columbia". Provisions identical with those of said section 6 were contained in act Oct. 23, 1962, 76 Stat. 1172, Pub. L. 88–873, § 6, which was repealed by Act Dec. 23, 1963, 77 Stat. 629, Pub. L. 88–241, § 21(a).

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 23, 1963, was made effective on Jan. 1, 1964. See not preceding ch. 1, Title 11.

CROSS REFERENCES

Commission may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

Refund of fees when license is refused, see § 47–1017.

Revocation or suspension of license for violation of Uniform Narcotic Drug Act, see § 33–418.

NOTES TO DECISIONS

Object of statute

Primary objective of statute providing that no persons shall operate employment agency without obtaining license was to furnish by careful supervision and regulation protection of individual applicants seeking employment through unscrupulous private agencies from many possible abuses within area. *National Staffing Consultants Inc.* v. *District of Columbia* (D.C. App. 1965, 211 A. 2d 762).

Penal nature of statute

Statutes providing that no person shall operate employment agency without obtaining license and providing that violation of statute is misdemeanor are penal in nature. *National Staffing Consultants Inc.* v. *District of Columbia* (D.C. App. 1965, 211 A. 2d 762).

§ 47–2102. Bond.

No license shall become effective under section 47–2101 until bond in due form in the penal sum of $1,000, or such lesser amount as the commissioners may determine with two or more sureties or a duly authorized surety company to be approved by the commissioners, shall have been deposited with the commissioners. The bond shall be payable to the District of Columbia and shall be conditioned that the person applying for the license will comply with this chapter and shall pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud, or deceit, or any unlawful act or omission of any licensed person, made, committed, or omitted in the business conducted under such license, or caused by any other violation of this chapter in carrying on the business for which such license is granted. One or more recoveries upon such bond shall not vitiate the same, but it shall remain in full force and effect: *Provided, however,* That the aggregate amount of all such recoveries shall not exceed the full amount of the bond. Upon

the commencement of any action or actions against the surety upon any such bond for a sum or sums aggregating or exceeding the amount of such bond the commissioners may require a new and additional bond in like amount as the original one which shall be filed with the commissioners within thirty days of the demand therefor. Failure to file such bond within the prescribed time shall constitute cause for the revocation of the license therefor issued. Any suit or action against the surety on any bond required by the provisions of this section shall be commenced within one year from the accruing of the cause of action thereon.

If at any time, in the opinion of the commissioners, the sureties, or any of them, shall become irresponsible, the person holding such license shall, upon notice from the commissioners, give a new bond, and the failure to give a new bond within ten days after such notice, in the discretion of the commissioners, shall operate as a revocation of such license.

The commissioners shall furnish to anyone applying therefor a certified copy of any such bond filed in their office upon the payment of a fee of $1, and such certified copy shall be prima facie evidence in any court that such bond was duly executed and delivered by the person or corporation whose name appears therein. (July 1, 1902, ch. 1352, § 7, par. 42b, as added July 1, 1932, 47 Stat. 560, ch. 366.)

§ 47–2103. Registers.

It shall be the duty of every licensee to keep a register, approved by the commissioners, in which shall be entered, in the English language, the date of the application for employment, the name and address of the applicant to whom employment is promised or offered, the amount of the fee received. and, whenever possible, the names and addresses of former employers or persons to whom such applicant is known. Such licensee shall also enter in a separate register approved by the commissioners, in the English language, the name and address of every applicant accepted for help, the date of such application, kind of help requested, the names of the persons sent, with the designation of the one employed, and the amount of the fee received. The aforesaid registers of applicants for employment and help shall be open during office hours to inspection by the said commissioners. No such licensee shall make any false entry in such registers. It shall be the duty of every licensee, whenever possible, to communicate orally or in writing with at least one of the persons mentioned as references for every applicant for work in private families or employed in a fiduciary capacity, and the result of such investigation shall be kept on file in such agency: *Provided,* That if the applicant for help voluntarily waives in writing such investigation of references by the licensee, failure on the part of the licensee to make such investigation shall not be deemed a violation of this section. (July 1, 1902, ch. 1352, § 7, par. 42c, as added July 1, 1932, 47 Stat. 561, ch. 366.)

§ 47–2104. Receipts.

It shall be the duty of such licensee to give to every applicant for employment from whom a fee shall be received a receipt in which shall be stated the name of said applicant, the date and amount of the fee, and the purpose for which it was paid, and to every applicant for help a receipt stating the name and address of said applicant, the date and amount of the fee, and the kind of help to be provided. Every receipt given by such licensee shall bear the name and address of such licensee printed in large type thereon. Every receipt shall have printed on the back thereof a copy of section 47–2108 in the English language. (July 1, 1902, ch. 1352, § 7, par. 42d, as added July 1, 1932, 47 Stat. 561, ch. 366.)

§ 47–2105. Location of place in which conducted.

No private employment agency licensed under section 47–2101 shall be located in rooms used for living purposes, or in rooms where boarders or lodgers are kept, or where meals are served or persons sleep, or in any building or on premises wherein rooms are located and used for living purposes, or wherein boarders or lodgers are kept, or where meals are served, or persons sleep, or in any building wherein such rooms are located; nor shall any such private employment agency be located in any such building where the entrance thereto is not separate and apart from the entrance to the building proper, or where there is any entrance into the building proper from said private employment agency: *Provided,* That no one shall be precluded from keeping an employment agency in an office building by reason of there being a cafe or restaurant in another part of said building. (July 1, 1902, ch. 1352, § 7, par. 42e, as added July 1, 1932, 47 Stat. 561, ch 366.)

§ 47–2106. Application of minor.

No licensee shall accept any application for employment made by or on behalf of any child, or shall place or assist in placing any such child in any employment whatever in violation of any compulsory education or child labor laws. (July 1, 1902, ch. 1352, § 7, par. 42f, as added July 1, 1932, 47 Stat. 561, ch. 366.)

§ 47–2107. Inspection.

All registers, books, records, and other papers required to be kept pursuant to this chapter in any private employment agency shall be open at all reasonable hours to the inspection of the commissioners, and every licensee shall post in a conspicuous place in such agency the license certificate. (July 1, 1902, ch. 1352, § 7, par. 42g, as added July 1, 1932, 47 Stat. 562, ch. 366.)

§ 47–2108. False information.

No licensee conducting any private employment agency shall publish or cause to be published any false or fraudulent or misleading information, representation, notice, or advertisement, nor shall he give any false information, or make any false promise or false representation concerning an engagement or employment to any applicant who shall register or apply for an engagement or employment or help. (July 1, 1902, ch. 1352, § 7, par. 42h, as added July 1, 1932, 47 Stat. 562, ch. 366.)

§ 47–2109. Exceptions from license requirements.

This chapter shall not apply to employment bureaus conducted by registered medical institutions, duly incorporated hospitals, or duly incorporated alumni associations of registered nurses, or to any bureau maintained by persons for the purpose of securing help or employees where no fee is charged. (July 1, 1902, ch. 1352, § 7, par. 42i, as added July 1, 1932, 47 Stat. 562, ch. 366.)

NOTES TO DECISIONS

Exempt agencies

Where no fee of any kind was paid by or received from individuals interested in meeting possible future corporate employers at career centers arranged for benefit of latter by defendant, defendant qualified as exception to statutory license requirement under provision excepting any bureau where no fee is charged. *National Staffing Consultants Inc.* v. *District of Columbia* (D.C. App. 1965, 211 A. 2d 762).

Business consulting firm, which conducted professional and semiprofessional career opportunity centers for corporate clients, which was paid agreed contract price for its services prior to holding of career center without regard to their success in hiring persons attending, and which received no fee if prospective employee was hired as result of attending meeting, did not conduct "private employment agency" within statute providing that no person shall operate employment agency without obtaining license. *Id.*

§ 47–2110. Employment contract.

No such person shall induce or attempt to induce any domestic employee to leave his employment with a view to obtaining other employment through such agency. Whenever any licensed person, or any other acting for him, agrees to send one or more persons, to work as contract laborers in any one place outside the city in which such agency is located, the said licensed person shall give to the applicant for employment, in writing, the name and address of the employer, name and address of the employee, nature of the work to be performed, wages offered, destination of the person employed, and terms of transportation. (June 19, 1906, 34 Stat. 308, ch. 3438, § 9.)

§ 47–2111. Character of employer—Fraud.

No such licensed person shall send, or cause to be sent, any female as a servant or inmate or performer to enter any place of bad repute, house of ill fame, or assignation house, or to any house or place of amusement kept for immoral purposes, or place resorted to for the purpose of prostitution, or gambling house, the character of which such licensed person could have ascertained upon reasonable inquiry. No such licensed person shall knowingly permit any person of bad character, prostitutes, gamblers, intoxicated persons, or procurers, to frequent such agency. No such person shall procure or offer to procure help or employment in rooms or on premises where intoxicating liquors are sold to be consumed on the premises, whether or not dues or a fee or privilege is exacted, charged, or received directly or indirectly: *Provided,* That it shall be unlawful for employment agents or agencies to send applicants for employment to employers other than those who have applied to such agents or agencies for help or labor. For the violation of any of the foregoing provisions of this section the penalty shall be a fine of not more than two hundred dollars and in default in payment thereof by imprisonment in the workhouse for a period of not more than one year, or both, at the discretion of the court. No such licensed person shall publish or cause to be published any false or fraudulent or misleading notice or advertisement. All advertisements of such employment agency by means of cards, circulars, or signs, and in newspapers and other publications, and all letter heads, receipts, and blanks shall contain the name and address of such employment agency, and no such licensed person shall give any false information, or make any false promise or false representation concerning employment to any applicant who shall register for employment or help. (June 19, 1906, 34 Stat. 308, ch. 3438, § 10.)

Chapter 22.—PUBLIC AUCTION PERMITS

Sec.

47–2201. Public auction—Auction of merchandise without permit from Commissioners prohibited.
47–2202. Application for permit—Fee—Information to be furnished.
47–2203. Personal effects, furniture, personal livestock may be sold without permit.
47–2204. Suspension of licensee for violations.
47–2205. Auction of jewelry, plated wares, prohibited after certain hour.
47–2206. Misrepresenting merchandise—Prosecution for.
47–2207. Prosecution for violation to be in District of Columbia Court of General Sessions.
47–2208. Construction.

§ 47–2201. Public auction—Auction of merchandise without permit from Commissioners prohibited.

Excepting sales made under authority of law, it shall be unlawful in the District of Columbia for any person, firm, or corporation, either for himself or itself, or for another, or for any firm, or corporation to sell or offer at public auction any stock or stocks of merchandise, in whole or in part, without first obtaining from the board of commissioners of the District of Columbia a written or printed permit so to do; and the said board of commissioners shall not issue a permit for any such sale or sales until they are satisfied that neither fraud nor deception of any kind is contemplated or will be practiced, and that neither the sale, the reasons therefor nor the goods to be sold have not already been or will not thereafter be fraudulently or falsely advertised or in any wise whatsoever misrepresented. (Sept. 8, 1916, 39 Stat. 846, ch. 473, § 1.)

CROSS REFERENCES

Commissioners may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

Other provisions for licensing and supervising auctioneers, see § 47–2309.

§ 47–2202. Application for permit—Fee—Information to be furnished.

Every such permit shall be issued for a definite period of time not exceeding twelve months from its date of issue, and the date and hour of its expiration shall be stated in the permit, and before such permit shall be issued the applicant therefor shall pay to the District of Columbia, through its collector of taxes, such fee as the said Board of Commissioners may deem sufficient to reimburse the District of Columbia for the work and expense of issuing the permit and gathering information concerning the applicant and his goods as the said board may deem

prudent and best for the protection of the public, but which fee shall not exceed the sum of $50. The application for the said permit shall be by verified petition, stating the name of the applicant, residence, street, and number of the proposed place of selling, and shall set forth in detail the goods to be sold and what statements or representations are to be made or advertised as to the same, and the length of time for which the permit is desired; and, if previously engaged in a like or similar business, to designate all the places where the same was conducted, and shall furnish to said commissioners such further evidence as shall be deemed necessary to establish the truth of the statements made in the said petition. (Sept. 8, 1916, 39 Stat. 846, ch. 473, § 2.)

CROSS REFERENCE

Refund of fees when license refused, see § 47–1017.

§ 47–2203. Personal effects, furniture, personal livestock may be sold without permit.

No permit as herein provided for shall be required for the sale of any wagon, carriage, automobile, mechanics' tools, used farming implements, livestock, including game, poultry (dressed or undressed), vegetables, fruits, melons, berries, flowers, or for the sale of used household furniture and effects when being sold at the residence of the housekeeper selling them. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 3.)

§ 47–2204. Suspension of licensee for violations.

The Board of Commissioners of the District of Columbia are hereby vested with authority to temporarily suspend the operation of the license herein provided for whenever they may believe that this chapter, or any part thereof, or regulations made in pursuance thereof, are about to be or are being violated, and they shall thereupon forthwith institute the appropriate proceeding in the District of Columbia Court of General Sessions in accordance with this chapter, and in the event that the said violation results in a conviction, then and in that event the license shall be and become null and void, but in the event that the said proceeding shall terminate in favor of the defendant, then and in that event the suspension of said license shall be at an end, and the license shall thereupon be restored and be in full force and effect. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 47–2205. Auction of jewelry, plated wares, prohibited after certain hour.

No person as herein provided for shall sell at public auction, from the 1st day of April until the 30th day of September, both inclusive, between the hours of seven o'clock in the evening and eight o'clock the following morning, nor from the 1st day of October until the 30th day of March, both inclusive, between the hours of six o'clock in the evening and eight o'clock in the morning, any jewelry, diamond, or other precious stone, watch, gold and silver ware, gold and silver plated ware, statuary, porcelains, bric-a-brac, or articles of virtu. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 5.)

§ 47–2206. Misrepresenting merchandise—Prosecution for.

Any person selling or offering for sale any property under the provisions of this chapter shall, in describing the same, be truthful with respect to the character, quality, kind, and description of the same and which, for the purpose hereof, shall be considered as warranties, and any breach of the same shall be punishable by prosecution in the District of Columbia Court of General Sessions, as hereinbefore set forth. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 6; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 47–2207. Prosecution for violation to be in District of Columbia Court of General Sessions.

All prosecutions under this chapter shall be in the District of Columbia Court of General Sessions upon information by the corporation counsel or one of his assistants. Any person violating any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine of not less than $10 nor more than $200 or imprisonment of not more than sixty days or both, in the discretion of the court. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 7; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 47–2208. Construction.

Nothing in this chapter shall be construed to excuse or release any person, firm or corporation, or property from the payment of any occupational or property tax, or any other tax imposed or levied by law. Neither shall anything herein be construed to obviate the application of any fraudulent or false advertisement statute of the District of Columbia to any person who may violate the same; nor shall anything herein be construed to prevent any prosecution for fraud, deceit, or larceny by trick; nor to in any way estop or hinder any remedy at law or in equity, or the right to cancel or estop any unconscionable bargain or fraudulent transaction. (Sept. 8, 1916, 39 Stat 847, ch. 473, § 8.)

Chapter 23.—GENERAL LICENSE LAW

Sec.
47-2301. Licenses required for business or profession—Application—Transfer of license—Signing and sealing.
47-2302. Compliance with fire escape laws and regulations required before license is issued.
47-2303. Theater licenses—Revocation for failure to comply with regulations for decency.
47-2304. Separate license for each business, trade, or profession by same person—Place of business restricted to that designated in license—Operation under license by others prohibited.
47-2305. Date and expiration of license—Prorating for late application.
47-2306. Licenses to be posted on premises—Exhibition to police.
47-2307. Construction and definition of terms.
47-2308. Druggists, apothecaries, and patent-medicine sellers.
47-2309. Auctioneers—Penalty for failure to account.
47-2310. Barber shops and beauty parlors.
47-2310a. Conventions of national associations of hairdressers or cosmetologists exempted.
47-2311. Massage establishments—Turkish, Russian, or medicated baths.
47-2312. Public baths.
47-2313. Keeping or storing of moving-picture films.
47-2314. Gasoline, kerosene, oils, and explosives.
47-2315. Pyroxylin.
47-2316. Abattoirs or slaughterhouses.
47-2317. Laundries—Dry cleaning and dyeing establishments.
47-2318. Mattresses—Manufacture or renovation.
47-2319. Slot machines.
47-2320. Theaters, moving pictures, skating rinks, dances, exhibitions, lectures, entertainments—Assignment of police and firemen and additional fees based thereon.
47-2321. Bowling alleys—Billiard and pool tables—Games.
47-2322. Shooting galleries.
47-2323. Baseball—Football—Athletic exhibitions—Amusement parks.
47-2324. Swimming pools.
47-2325. Circuses.
47-2326. Carnivals and fairs.
47-2327. Commission merchants in food—Bakeries—Bottling establishments — Groceries — Markets—Restaurants.
47-2328. Classification of buildings containing living quarters for licenses—Fees—Buildings exempt from license requirement.
47-2329, 47-2330. Repealed.
47-2331. Vehicles for hire—Hackers' licenses—Identification tags on vehicles—Sightseeing vehicles for school children, occasional purposes—Ambulances, private vehicles for funeral purposes—Issuance of licenses—Payment of fees.
47-2332. Rental or leasing of motor vehicle without driver.
47-2333. Vehicles hauling goods from public space.
47-2334. Repairing of motor vehicles.
47-2335. Livery stables.
47-2336. Sales on streets or public places.
47-2337. Solicitors.
47-2338. Guides.
47-2339. Secondhand dealers — Classification — Licensing—Stolen property.
47-2340. Dealers in dangerous weapons.
47-2341. Private detectives.
47-2342. Fortune telling.
47-2343. Exposing persons or animals as targets prohibited.
47-2344. Commissioners may regulate, modify, or eliminate license requirements.
47-2344a. Undertakers' licenses—Qualifications — Examination—License without examination—Authority of Commissioners—Appropriations—Definitions.
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47-2345. Promulgation of regulations authorized—Suspension or revocation of licenses—Bonding of licensees authorized to collect moneys—Exemptions.
47-2346. Prosecutions.
47-2347. Penalties.
47-2348. Saving clause.
47-2349. Separability of provisions.
47-2350. Refund of erroneously-paid fees.

§ 47-2301. Licenses required for business or profession—Application—Transfer of license—Signing and sealing.

No person shall engage in or carry on any business, trade, profession, or calling in the District of Columbia for which a license fee or tax is imposed by the terms of this chapter without having first obtained a license so to do. Applications for licenses shall be made to the commissioners of the District of Columbia or their designated agent in accordance with the provisions of the Act of Congress, approved March 3, 1917, and no license shall be granted until payment for the same shall have been made. Every license shall specify by name the person, firm, or corporation to which it shall be issued, the business, trade, profession, or calling for which it is granted, and the location at which such business, trade, profession, or calling is to be carried on. Licenses granted under the terms of this chapter may be assigned or transferred on application upon the conditions applicable to granting the original licenses, and the commissioners of the District of Columbia or their designated agent shall issue a certificate of such assignment or transfer upon the payment to the District of Columbia of a fee of $1 therefor. All licenses and transfers issued or granted shall be signed by the commissioners of the District of Columbia or their designated agent and impressed with a seal to be adopted by the commissioners of the District of Columbia. (July 1, 1902, 32 Stat. 622, ch. 1352, § 7, par. 1; July 1, 1932, 47 Stat. 550, ch. 366.)

References in Text

The Act of Congress, approved March 3, 1917, referred to in the text, means act Mar. 3, 1917, 39 Stat. 1006, ch. 160. For classification of this act in this Code, see Tables.

Amendment

1932—Act July 1, 1932, transferred the authorization to issue licenses from the assessor to the Commissioners of the District of Columbia or their designated agent, and increased the fee for a certificate of assignment or transfer from 50 cents to $1.

Transfer of Functions

Reorganization Order No. 55 of the Board of Commissioners dated June 30, 1953, established under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The order set out the purpose, organization, and functions of the new department. The order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section; and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The order provided that

in accordance with the provisions of Reorganization Plan No. 5 of 1952 the named organizations were abolished. The order and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCES

Police powers generally, see § 1–226, and notes.

Power of Commissioners over licenses, see §§ 47–2344, 47–2345.

Refund of fees when license refused, see § 47–2350.

Revocation or suspension of licenses for violation of Uniform Narcotic Drug Act, see § 33–418.

NOTES TO DECISIONS

Taxicabs

Under statutes delegating to District of Columbia Public Utilities Commission power to regulate public utilities, Congress did not confer the power to grant or withhold licenses to operate taxicabs, but such power was delegated to Commissioners of the District of Columbia. *Associated Taxicab Operators* v. *Hayes et al.* (1957, 240 F. 2d 638, 99 U. S. App. D. C. 400).

§ 47–2302. Compliance with fire escape laws and regulations required before license is issued.

No license shall be issued to any person for the operation of a business in any building or part thereof containing living or lodging quarters of any description required to be licensed under authority of this Act, nor for any place of public assembly required to be licensed as hereinafter provided, nor for any other building or place mentioned in sections 5–317 to 5–323, required to be licensed as hereinafter provided or required to be licensed in any other Act of Congress, until the Director of Inspection, the Chief Engineer of the Fire Department, and any other official of the District of Columbia who shall be designated by the Commissioners of the District of Columbia, have certified in writing to the Commissioners of the District of Columbia or their designated agent that the applicant for license has, as to such building or place, complied with all laws enacted and regulations made and promulgated for the protection of life and property. (July 1, 1902, 32 Stat. 623, ch. 1352, § 7 par. 2; July 1, 1932, 47 Stat. 550, ch. 366; July 22, 1947, 61 Stat. 402, ch. 296, § 1.)

REFERENCES IN TEXT

This Act, referred to in the text, means act July 1, 1902, 32 Stat. 622, ch. 1352. For classification of this Act in this Code, see Tables.

AMENDMENTS

1947—Act July 22, 1947, substituted "for the operation of a business in any building or part thereof containing living or lodging quarters of any description required to be licensed under authority of this Act, nor for any place of public assembly required to be licensed as hereinafter provided, nor for any other building or place mentioned in sections 5–317 to 5–323, required to be licensed as hereinafter provided or required to be licensed in any other Act of Congress, until the Director of Inspection, the Chief Engineer of the Fire Department, and any other official of the District of Columbia who shall be designated by the Commissioners of the District of Columbia" for "to conduct any business for which a license is required in any building mentioned in the Act entitled 'An Act to require the erection of fire escapes in certain buildings in the District of Columbia, and for other purposes,' approved March 19, 1906, as amended by the Act approved March 2, 1907, until such building has been provided and equipped with a sufficient number of fire escapes and other appliances required by said Acts; and no license shall be issued under the provisions of this section relating to hotels, apartment houses, lodging houses, theaters, public halls, public amusement parks, or buildings in which moving pictures are displayed for profit or gain, until the inspector of buildings, the chief officer of the fire department, and the electrical engineer", and inserted words "as to such building or place" preceding "complied with all laws."

1932—Act July 1, 1932, amended section generally. Section prior to such amendment, read as follows: "That when more than one business, trade, profession, or calling for which a license is herein prescribed shall be carried on by the same person, the license tax shall be paid for each such business, trade, profession, or calling: *Provided*, That licenses issued under any of the provisions of this Act shall be good only for the location designated thereon, and no license shall be issued for more than one place of business, profession, or calling, without the payment of a separate tax for each: *Provided further*, That no license shall be granted under the provisions of this section, relating to hotels and theaters, until the Inspector of Buildings and the chief officer of the Fire Department have certified in writing to the Assessor that the applicant for license has complied with the laws enacted and the regulations made and promulgated for the protection of life and property." See § 47–2304.

EFFECTIVE DATE OF 1947 AMENDMENT

Section 4 of act July 22, 1947, provided that: "This Act [amending this section and sections 47–2304 and 47–2308, and repealing sections 47–2329 and 47–2330] shall become effective sixty days after its passage and approval [July 22, 1947]."

TRANSFER OF FUNCTIONS

Fire Chief as successor to Chief Engineer of the Fire Department, see note under § 4–402.

For transfer of certain functions to Department of Licenses and Inspections, see note under § 47–2301.

CROSS REFERENCES

Inspection fees for business required to have annual license, see § 5–316.

Withholding licenses for failure to comply with safety regulations for buildings, see § 5–308.

NOTES TO DECISIONS

Previous building construction

Building regulations had no controlling effect in determining whether fan-shaped landing was improper construction where building was constructed before adoption of building regulations which were limited to new residential buildings. *Phillips* v. *Capital Investment & Guaranty Co.* (D.C. Mun. App. 1943, 32 A. 2d 249).

§ 47–2303. Theater licenses—Revocation for failure to comply with regulations for decency.

Any license issued by the commissioners of the District of Columbia or their designated agent to the proprietor of a theater or other public place of amusement may be terminated by the commissioners whenever it shall appear to them that after due notice the person holding such license shall have failed to comply with such regulations as may be prescribed by the commissioners for the public decency. (July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 3; July 1, 1932, 47 Stat. 551, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That all licenses issued shall date from the first day of November in each year and expire on the thirty-first day of October following, except as hereinafter provided. Licenses issued at any time after the beginning of the license year shall date from the first day of the month in which the license was issued and end on the last day of the license year above prescribed, and payment shall be made of the proportionate amount of the annual license tax: *Provided*, That in cases where the tax is less than five dollars per annum the license shall terminate one year from the first day of the month in which the license was issued." See § 47–2305.

§ 47–2304. Separate license for each business, trade, or profession by same person—Place of business restricted to that designated in license—Operation under license by others prohibited.

When more than one business, trade, profession, or calling for which a license is prescribed in this chapter shall be carried on by the same person, the license fee or tax shall be paid for each such business, trade, profession, or calling, except where otherwise specifically provided in this chapter; *Provided,* That licenses issued under any of the provisions of this chapter shall be good only for the location designated thereon, except in the case of licenses issued under this chapter for businesses and callings which in their nature are carried on at large and not at a fixed place of business, and no license shall be issued for more than one place of business, profession, or calling, without the payment of a separate fee or tax for each, and if a business is conducted in more than one building a separate license shall be required for the business in each building: *Provided further,* That no person holding a license under the terms of this chapter shall willfully suffer or allow any other person chargeable with a separate license to operate under his license. (July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 4; July 1, 1932, 47 Stat. 551, ch. 366; July 22, 1947, 61 Stat. 402, ch. 296, § 2.)

AMENDMENTS

1947—Act July 22, 1947, required a separate license for the business in each building where a business is conducted in more than one building.

1932—Act July 1, 1932, inserted provisions requiring the payment of a license fee or tax for each business where more than one business, trade, profession or calling is carried on by the same person, and which limit the use of a license only for the location designated thereon. These provisions were formerly contained in § 47–2302.

EFFECTIVE DATE OF 1947 AMENDMENT

Amendment of section by act July 22, 1947, effective 60 days after July 22, 1947, see section 4 of act July 22, 1947, set out as a note under § 47–2302.

§ 47–2305. Date and expiration of license—Prorating for late application.

All licenses issued shall date from the 1st day of November in each year and expire on the 31st day of October following, except as hereinafter provided. Licenses issued at any time after the beginning of the license years shall date from the 1st day of the month in which the license was issued and end on the last day of the license year above prescribed, and payment shall be made of the proportionate amount of the annual license fee or tax: *Provided,* That where the license fee is $5 or less the fee shall not be prorated: *And provided further,* That no fee or tax shall be prorated to an amount less than $5. (July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 5; July 1, 1932, 47 Stat. 551, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That all licenses granted under the terms of this section must be conspicuously posted on the premises of the licensee. Said licenses shall be accessible at all times for inspection by the police or other officers duly authorized to make such inspections. Licensees having no located place of business shall exhibit their licenses when requested to do so by any of the officers above named." See § 47–2306.

CROSS REFERENCE

Theater license, see § 47–2320.

§ 47–2306. Licenses to be posted on premises—Exhibition to police.

All licenses granted under the terms of this chapter must be conspicuously posted on the premises of the licensee and said licenses shall be accessible at all times for inspection by the police or other officers duly authorized to make such inspections. Licensees having no located place of business shall exhibit their licenses when requested to do so by any of the officers above named. (July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 6; July 1, 1932, 47 Stat. 551, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That no person shall set up, operate, or conduct any business or device by or in which any person, animal, or living object shall act or be exposed as a target for any ball, projectile, missile, or thing thrown or projected, for or in consideration of profit or gain, directly or indirectly." See § 47–2343.

§ 47–2307. Construction and definition of terms.

For the purposes of this chapter the word "person" shall signify and include firms, corporations, companies, associations, executives, administrators, guardians, or trustees; the word "agent" shall signify and include every person acting for another; the word "merchandise" shall signify and include every article of commerce whether sold in bulk or otherwise; the word "dealers" shall signify and include every person engaged in selling or offering for sale any description of merchandise or property. Words of one number shall signify and include words of both numbers, respectively, and words of one gender shall signify and include words of every gender, respectively: *Provided,* That nothing in this chapter shall be interpreted as repealing any specific Act of Congress or any of the police or building regulations of the District of Columbia regarding the establishment or conduct of the businesses, trades, professions, or callings named in this chapter, and not inconsistent with the provisions of this chapter. (July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 7; July 1, 1932, 47 Stat. 551, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That apothecaries or druggists shall pay a license tax of six dollars per annum. Every person who sells patent medicines, or manufactures, compounds, sells, or dispenses medicines by prescription or otherwise from a located place of business shall be regarded as an apothecary or druggist." See § 47–2308.

§ 47–2308. Druggists, apothecaries, and patent-medicine sellers.

Apothecaries or druggists shall pay a license fee of $12 per annum. Every person who sells patent medicines, or manufactures, compounds, sells, or dispenses medicines by prescription or otherwise from a located place of business shall be regarded as an apothecary or druggist. (July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 8; July 1, 1932, 47 Stat. 551, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That auctioneers shall pay a license tax of one hundred dollars per annum. Hereafter the provisions of the Act of Congress entitled 'An Act to prevent fraudulent transactions on the part of commission merchants,' approved

March twenty-first, eighteen hundred and nine-two, shall be applicable to all licensed auctioneers, their agents, and employees." See § 47–2309.

CROSS REFERENCES

Board of pharmacy, powers and duties, see § 2–601 et seq.

Uniform Narcotic Drug Act, see § 33–418.

§ 47–2309. Auctioneers—Penalty for failure to account.

Auctioneers shall pay a license fee of $5 per annum. No license shall issue hereunder without the approval of the major and superintendent of police. If any licensed auctioneer, his agent or employee, shall convert to his own use in the District of Columbia any goods, wares, merchandise, or personal property of any description, or the proceeds of the same, and shall fail to pay over the avails or proceeds from the sale thereof, less his proper charges, within five days after receiving the money or its equivalent from the purchaser or purchasers of said goods, wares, merchandise, or personal property of any description, and after demand made therefor by the person entitled to receive the same, or his or her duly authorized agent, he shall be deemed guilty of a misdemeanor, and upon information and conviction in the District of Columbia Court of General Sessions shall be fined not more than $1,000 or be imprisoned not exceeding six months, or both, in the discretion of the court. Nothing herein contained shall be construed to repeal or alter the provisions of §§ 47–2201 to 47–2208. (July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 9; July 1, 1932, 47 Stat. 552, ch. 366; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That commission merchants shall pay a license tax of forty dollars per annum. Every person, firm, or corporation that acts as agent for others in negotiating sales or purchases of goods, wares, or merchandise, live stock, produce, and so forth, or negotiates freights for railroads, ships, or vessels, or for the shippers or consignees of freights carried by railroads, ships, or vessels, shall be regarded as a commission merchant.

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

TRANSFER OF FUNCTIONS

Chief of Police as successor to major and superintendent of police, see note under § 4–103.

CROSS REFERENCES

Conversion by commission merchant, see § 22–1208.

Embezzlement, penalties, see § 22–1206 et seq.

Police supervision of auctioneers of watches and jewelry, see § 4–147.

§ 47–2310. Barber shops and beauty parlors.

Owners or managers of barber shops, beauty parlors, beauty salons, vanity shops, or shingle shops, by whatsoever name called, where hair cutting, hairdressing, hair dyeing, manicuring, and kindred acts are practiced shall pay a license fee of $5 per annum. (July 1, 1902, 32 Stat. 624, ch. 1352, § 7, par. 10; July 1, 1932, 47 Stat. 552, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That cattle dealers shall pay a license tax of fifteen dollars per annum: *Provided,* That one person only shall be entitled to do business under each license. Every person who makes a business of trading, buying, or selling horses, cattle, sheep, or hogs shall be regarded as a cattle dealer."

CROSS REFERENCES

Barbers, see § 2–1101 et seq.

Cosmetologists, see § 2–1301 et seq.

§ 47–2310a. Conventions of national associations of hairdressers or cosmetologists exempted.

The provisions of sections 2–1301 to 2–1328 and of section 47–2310, shall not be applicable to activities conducted in connection with any bona fide regularly scheduled national annual convention of any national association of professional hairdressers or cosmetologists, from which the general public is excluded. (Aug. 4, 1955, 69 Stat. 485, ch. 544, § 1.)

CODIFICATION

Section was not enacted as part of section 7 of act July 1, 1902, which comprises this chapter.

§ 47–2311. Massage establishments—Turkish, Russian, or medicated baths.

Owners or managers of massage establishments and Turkish, Russian, or medicated baths shall pay a license fee of $5 per annum. No license shall be issued under this section without the approval of the major and superintendent of police. It shall be unlawful for any female to give or administer massage treatment or any bath to any person of the male sex, or for any person of the male sex to give or administer massage treatment or any bath to any person of the female sex, in any establishment licensed under this section. Any person violating the provisions of this section shall, upon conviction, be punished as hereinafter provided in this chapter; and, in addition to such penalty, it shall be the duty of the Commissioners of the District of Columbia to revoke the license of the owner or manager of the establishment wherein the provisions of this section shall have been violated. (July 1, 1902, 32 Stat. 624, ch. 1352, § 7, par. 11; July 1, 1932, 47 Stat. 552, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That proprietors or owners of hacks, coaches, omnibuses, carriages, wagons, and other passenger vehicles for hire shall pay license taxes as follows: Vehicles drawn by one animal, six dollars per annum; autovehicles, automobiles, electromobiles, or other horseless vehicles by whatever name called, and vehicles drawn by more than one animal nine dollars per annum. Licenses issued under this section shall date from July first in each year. The driver of every licensed passenger vehicle, while transacting business as such driver, shall wear conspicuously upon his breast a badge numbered to correspond with the license of his vehicle. The badge shall be furnished by the District of Columbia and a tax of fifty cents shall be charged therefor in addition to the amount of the vehicle license." See § 47–2331.

TRANSFER OF FUNCTIONS

Chief of police as successor to major and superintendent of police, see note under § 4–103.

§ 47–2312. Public baths.

Owners or managers of establishments where public baths are supplied to transients shall pay a license fee of $5 per annum. (July 1, 1902, 32 Stat. 624, ch. 1352, § 7, par. 12; July 1, 1932, 47 Stat. 552, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That proprietors or owners of livery stables shall pay license taxes as follows: For stables containing ten stalls or less, twenty-five dollars per annum, and two dollars per annum additional for each stall in addition to ten: *Provided,* That nothing in this paragraph shall be so construed as to exempt livery-stable keepers from paying additional license taxes for operating any description of vehicles occupying the public stands." See § 47–2335.

§ 47–2313. Keeping or storing of moving-picture films.

Owners or managers of establishments where moving-picture films are kept or stored shall pay a license fee of $65 per annum. No license shall be issued hereunder without the approval of the fire marshal of the District of Columbia. (July 1, 1902, 32 Stat. 624, ch. 1352, § 7, par. 13; July 1, 1932, 47 Stat. 552, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That proprietors or owners of establishments where autovehicles of any pattern, description, or motor power whatsoever are kept for hire or are kept or stored for others, for profit or gain, shall pay a license tax of twenty-five dollars per annum for ten vehicles or less and two dollars additional for each vehicle in addition to ten: *Provided,* That nothing in this paragraph shall be so construed as to exempt the owner of any vehicle using the public stands from paying the additional license tax provided in paragraph eleven of this section."

CROSS REFERENCE

Power of Commissioners to make police regulations to regulate the storage of highly inflammable substances and to prohibit use of fireworks or explosives, see §§ 1–224, 1–227.

§ 47–2314. Gasoline, kerosene, oils, and explosives.

(a) Owners or managers of establishments where gasoline or oils of like grade are sold shall pay a license fee of $3 per annum for each pump used in dispensing said gasoline or oils.

(b) Owners or managers of establishments where kerosene or oils of like grade are stored or are kept for sale shall pay a license fee of $5 per annum.

(c) Owners or managers of establishments where explosives of any kind are stored or are kept for sale shall pay a license fee of $5 per annum.

(d) No license shall be issued under this section without the approval of the fire marshal of the District of Columbia. (July 1, 1902, 32 Stat. 624, ch. 1352, § 7, par. 14; July 1, 1932, 47 Stat. 552, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That persons, firms, or corporations operating vehicles for hire or for the transportation of passengers in the District of Columbia with sufficient regularity to enable the public to take passage therein at any point intermediate to the stable or stand of such vehicle, or operate such vehicle over a route sufficiently definite to enable the public to ascertain the streets and avenues on which such vehicle can be found en route, shall pay license taxes as follows: For each vehicle with a seating capacity not to exceed ten passengers, six dollars per annum; for each vehicle with a seating capacity exceeding ten passengers, twelve dollars per annum. No license shall be issued under the terms of this paragraph without the approval of the Commissioners of the District of Columbia." See § 47–2331.

§ 47–2315. Pyroxylin.

Owners or managers of establishments where pyroxylin is kept or stored for painting or spraying shall pay a license fee of $5 per annum. No license shall issue hereunder without the approval of the fire marshal of the District of Columbia. (July 1, 1902, 32 Stat. 624, ch. 1352, § 7, par. 15; July 1, 1932, 47 Stat. 552, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That real estate brokers or agents shall pay a license tax of fifty dollars per annum. Every person who sells, or offers for sale, as the agent for others, real estate, wherever located, including mining and quarry property, or who makes or negotiates loans thereon, or who rents houses, buildings, stores, or real estate, or who collects rents for others, shall be regarded as a real estate broker or agent: *Provided,* That the practice of a profession in connection with the real estate business shall not exempt any person from the requirements of this paragraph who would otherwise be liable hereunder."

§ 47–2316. Abattoirs or slaughterhouses.

Owners or proprietors of abattoirs or slaughterhouses, by whatsoever name called, shall pay a license fee of $100 per annum. No license shall issue hereunder except with the approval of the director of public health of the District of Columbia and a compliance with existing laws concerning location. (July 1, 1902, 32 Stat. 624, ch. 1352, § 7, par. 16; July 1, 1932, 47 Stat. 553, ch. 366; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That persons, firms, corporations, or associations transacting the business of the purchase or sale of securities, stocks, shares, or certificates, based upon an estimated value after a lapse of a certain period of time, or who undertake to guarantee the holder of said securities, stocks, shares, or certificates certain sums of money based upon investments after the lapse of a certain time, or who promise to divide with the holders or investors of said securities, stocks, shares, or certificates, or with the heirs or assigns of such holders or investors, any profit which may accrue from their investments at maturity, shall pay a license tax of one hundred dollars per annum: *Provided,* That this paragraph shall not apply to any fire or life insurance company or building association allowed to transact business as such in the District of Columbia."

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

§ 47–2317. Laundries—Dry cleaning and dyeing establishments.

(a) Owners or managers of laundries operated other than by hand power shall pay a license fee of $18 per annum.

(b) Owners or managers of laundries operated by hand power shall pay a license fee of $5 per annum.

(c) Owners or managers of dry cleaning or dyeing establishments shall pay a license fee of $5 per annum. (July 1, 1902, 32 Stat. 625, ch. 1352, § 7, par. 17; July 1, 1932, 47 Stat. 553, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That railroad ticket brokers shall pay a license tax of twenty-five dollars per annum."

§ 47–2318. Mattresses—Manufacture or renovation.

(a) Persons engaged in the business of manufacturing or renovating mattresses shall pay a license fee of $75 per annum.

(b) Owners or managers of establishments where mattresses are stored, sold, or kept for sale, shall pay a license fee of $10 per annum.

(c) Within the meaning of this section, "mattress" shall be deemed to include "any quilt, comfort, pad, pillow, cushion, or bag stuffed with hair, down, feathers, wool, cotton, excelsior, jute, or any other soft material and designed for use for sleeping or reclining purposes." (July 1, 1902, 32 Stat. 625, ch. 1352, § 7, par. 18; July 1, 1932, 47 Stat. 553, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "Proprietors of hotels shall pay annually one dollar for each room provided for the accommodation of guests: *Provided,* That no license shall be issued for less than thirty dollars per annum, dating from November first. Every place where food and lodging are provided for transient guests shall be regarded as a hotel."

CROSS REFERENCE

General provisions governing manufacture, renovation, and sale of mattresses, see §§ 6–601 to 6–608.

§ 47–2319. Slot machines.

Proprietors of slot weighing machines, or slot machines used for dispensing foodstuffs or refreshments of any kind, shall pay a license fee of $2 per annum for each such machine. (July 1, 1902, 32 Stat. 625, ch. 1352, § 7, par. 19; July 1, 1932, 47 Stat. 553, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That victualers, owners of restaurants, oysters houses, cookshops, ice-cream parlors, dairy lunches, or eating houses, by whatsoever name designated, where food, meals, or refreshments are served to transient customers, to be eaten on the premises where sold, shall pay a license tax of eighteen dollars per annum: *Provided,* That this paragraph shall not apply to the proprietors of hotels nor to private boarding houses where board and lodging are provided by the week or month."

CROSS REFERENCE

Regulation and supervision of slot machines, see § 10–109.

§ 47–2320. Theaters, moving pictures, skating rinks, dances, exhibitions, lectures, entertainments—Assignment of police and firemen and additional fees based thereon.

(a) Owners or managers of theaters having a stage and movable scenery, used for the purpose of acting, performing, or playing in any play, farce, interlude, opera, or other theatrical or dramatic performance, or any scene, section, or portion of any play, farce, burlesque, or drama of any description, for profit or gain, shall pay a license fee of $50 per annum.

When in the opinion of the Chief Engineer of the Fire Department of the District of Columbia, it is necessary to post firemen at, on, and about the licensed premises for the protection of the public safety, in addition to the license fee provided for above, such owners or managers shall pay a further monthly permit fee, to be determined monthly by the said Chief Engineer, based upon a reasonable estimate of the number of hours to be spent by firemen at, on, and about the licensed premises, such fee to be payable in advance on the first day of the month for which the permit is sought. The firemen so assigned shall be charged for by the hour at the wage rate of the firemen so assigned in effect on the first day of the month for which the permit is sought.

(b) Owners or managers of theaters in which moving pictures are displayed, for profit or gain, shall pay a license fee of $30 per annum.

(c) Owners or managers of buildings in which skating rinks, fairs, carnivals, balls, dances, exhibitions, lectures, or entertainments of any description are conducted, for profit or gain, shall pay a license fee of $8 per annum: *Provided,* That for entertainments, concerts, or performances of any kind where the proceeds are intended for church or charitable purposes, and where no rental is charged, no license shall be required: *Provided further,* That when, in the opinion of the Major and Superintendent of Police and the Chief Engineer of the Fire Department of the District of Columbia, or either of them, it is necessary to post policemen or firemen, or both, at, on, and about the licensed premises for the protection of the public safety, in addition to the license fee provided for above, such owners or managers shall pay a further monthly permit fee, to be determined monthly by the said Major and Superintendent and Chief Engineer, or either of them, based upon a reasonable estimate of the number of hours to be spent by policemen and firemen at, on, and about the licensed premises, this fee to be payable in advance on the first day of the month for which the permit is sought. Policemen and firemen so assigned shall be charged for by the hour at the basic daily wage rate of policemen and firemen so assigned in effect the first day of the month for which the permit is sought. (July 1, 1902, 32 Stat. 625, ch. 1352, § 7, par. 20; July 1, 1932, 47 Stat. 553, ch. 366; June 29, 1948, 62 Stat. 1109, ch. 735, §§ 1, 2.)

AMENDMENTS

1948—Subsec. (a) amended by act June 29, 1948, § 1, which added the second paragraph.

Subsec. (c) amended by act June 29, 1948, § 2, which added the last proviso.

1932—Act July 1, 1932, amended section generally, and among other changes, reduced the license fee for theaters having a stage and movable scenery from $100 to $50 per annum, and for buildings in which skating rinks, fairs, carnivals, balls, dances, exhibitions, lectures, or entertainments are conducted from $100 to $8 per annum, and inserted provisions requiring payment of a fee of $30 per annum by owners or managers of theaters in which moving pictures are displayed.

TRANSFER OF FUNCTIONS

Chief of police as successor to major and superintendent of police, see note under § 4–103.

Fire chief as successor to Chief Engineer of the Fire Department, see note under § 4–402.

CROSS REFERENCE

Revocation for public indecency, see § 47–2303.

§ 47–2321. Bowling alleys—Billiard and pool tables—Games.

Owners or managers of establishments where bowling alleys, billiard or pool tables, or any table, alley, or board upon which legitimate games are played, shall, when they are operated or conducted for public use, or for profit or gain, pay a license tax of $12 per annum for each such alley, board, or table. No license shall issue under this section without the approval of the major and superintendent of police: *Provided,* That in case of refusal of said major and superintendent to approve said license, or upon written protest of a majority or more of the property owners or residents of the block in which it is proposed to grant such license, an appeal may be taken to the commissioners of the District of Columbia, whose decision shall be final. All establishments licensed under this section shall be closed during the entire twenty-four hours of each and every Sunday and between the hours of one o'clock antemeridian and eight o'clock antemeridian on the secular days of the week: *Provided, however,* That bowling-alley establishments licensed under this section shall be closed at midnight on Saturday night and shall remain closed until 2 o'clock postmeridian. (July 1, 1902, 32 Stat. 625, ch. 1352, § 7, par. 21; July 1, 1932, 47 Stat. 553, ch. 366; Apr. 14, 1937, 50 Stat. 63, ch. 77.)

AMENDMENTS

1937—Act Apr. 14, 1937, added the second proviso requiring bowling-alleys to be closed at midnight on Saturday night and to remain closed until 2 o'clock postmeridian.

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That every person who exhibits paintings, pictures, or works of art, or makes industrial, mechanical, agricultural, food, or floral exhibitions, including cattle and poultry shows, freaks and museum attractions, side shows, and all other lawful exhibitions not otherwise provided for, shall pay a license tax of three dollars per day, or ten dollars for the first week and five dollars additional for each subsequent consecutive week, and for an annual license the tax shall be one hundred dollars."

TRANSFER OF FUNCTIONS

Chief of police as successor to major and superintendent of police, see note under § 4–103.

PRIOR PROVISIONS

Some portions of D. C. 1929, title 20, §§ 907–910, may still be in effect. For this reason they are set out herein as notes. They read as follows:

"*907. Billiard, pool, bagatelle tables, etc.*—It shall be unlawful for any person or persons to keep any billiard table, bagatelle table, shuffleboard, jenny-lind table, pool table, or any table upon which legitimate games are played, in any saloon, room, or place of business within the District of Columbia for public use or for profit or gain, without a license therefor first had and obtained from the superintendent of licenses of the District of Columbia. (Feb. 25, 1897, 29 Stat. 594, ch. 315, § 1.)"

"*908. Same; date of license.*—Every person taking out such license shall pay to the collector of taxes of said District a license fee of twelve dollars per annum for each table. Said license may be granted or refused in the discretion of the superintendent of licenses of said District, and all licenses so granted shall date from the first day of the month in which the liability began and expire on the thirty-first day of October in each year: *Provided,* That in all cases of refusal of said superintendent of licenses to grant said license, or upon written protest of a majority or more of the property owners or residents of the block in which it is proposed to grant such license, an appeal may be taken to the Commissioners of the District of Columbia, whose decision shall be final. Proprietors of bowling alleys in the District of Columbia shall pay to the collector of taxes of said District an annual license tax of twelve dollars for each alley. (Feb. 25, 1897, 29 Stat. 594, ch. 315, § 2; July 1, 1902, 32 Stat 628, ch. 1352, § 7, par. 45; Apr. 28, 1904, 33 Stat 565, ch. 1815.)"

"*909. Same; penalty for failure to procure license.*—Every person who shall own, keep, or use any billiard table, bagatelle table, pool table, or any table or board of the kind mentioned in section 907 of this title, for public use or profit without such license first had and obtained, shall, on conviction in the police court, be fined twenty dollars or imprisoned not exceeding three months for each offense, or both, in the discretion of the court. (Feb. 25, 1897, 29 Stat. 594, ch. 315, § 3.)"

"*910. Same; to be closed twenty-four hours every Sunday.*—It shall not be lawful for the proprietors of billiard tables, pool tables, bagatelle tables, jenny lind tables, or other tables of the kind mentioned in section 907 of this title, shuffleboards and bowling alleys, kept for public hire and gain in the District of Columbia to sell or to allow to be sold in the same room, spirituous, vinous, or malt liquors, and all such places shall be closed during the entire twenty-four hours of each and every Sunday, and also between twelve o'clock midnight and four o'clock in the morning. And it shall be unlawful for the proprietor or proprietors of any billiard or pool room or billiard or pool table operated in connection with a bar-room or other place where intoxicating liquors are sold to suffer or permit any minor under eighteen years of age to frequent, visit, or patronize the same.

"Any person violating the provisions of this section shall, on conviction, be punished by a fine of not less than five nor more than forty dollars, and shall in addition forfeit his or her license, in the discretion of the Commissioners of the District of Columbia. (Mar. 3, 1893, 27 Stat. 565, ch. 204, § 6; Feb. 25, 1897, 29 Stat. 595, ch. 315, § 4; May 22, 1902, 32 Stat. 202, ch. 819.)"

§ 47–2322. Shooting galleries.

Owners or managers of shooting galleries shall pay a license fee of ten dollars per annum. No shooting gallery shall be licensed until the inspector of buildings for the District of Columbia shall furnish a certificate that suitable precautions have been taken for the public safety by the erection of suitable shields and such appliances as, in his judgment, may be necessary. Before such license shall be issued the proprietor shall furnish to the commissioners of the District of Columbia or their designated agent the written consent of a majority of the occupants and residents on the same side of the square or block in which the proposed gallery is to be located and also on the confronting side of the square fronting opposite to the same. The major and superintendent of police is hereby authorized to prescribe the caliber of firearms and kind of cartridges to be used in such licensed places. (July 1, 1902, 32 Stat. 625, ch. 1352, § 7, par. 22; July 1, 1932, 47 Stat. 554, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That persons conducting concerts, entertainments, or balls to which an admission fee is charged, directly or indirectly, shall pay a license tax of three dollars for each day or night."

TRANSFER OF FUNCTIONS

Chief of police as successor to major and superintendent of police, see note under § 4–103.

§ 47–2323. Baseball—Football—Athletic exhibitions—Amusement parks.

(a) Owners or managers of grounds used for baseball, football, or other athletic exhibitions to which an admission fee is charged, directly or indirectly, shall pay a license fee of $5 per annum.

When, in the opinion of the Major and Superintendent of Police and Chief Engineer of the Fire Department of the District of Columbia, or either of them, it is necessary to post policemen or firemen, or both, at, on, and about the licensed premises for the protection of the public safety, in addition to the license fee provided for above, such owners or managers shall pay a further monthly permit fee, to be determined monthly by the said Major and Superintendent and Chief Engineer, or either of them, based upon a reasonable estimate of the number of hours to be spent by policemen and firemen, or either of them, at, on, and about the licensed premises, such fee to be payable in advance on the first day of the month for which the permit is sought. Policemen and firemen so assigned shall be charged for by the hour at the basic hourly wage rate of the policemen and firemen so assigned in effect on the first day of the month for which the permit is sought.

(b) Owners or managers of grounds used for amusement parks, to which an admission is charged, directly or indirectly, other than those used for athletic exhibitions, shall pay a license fee of $65 per annum. Annual licenses issued under this section shall date from April 1 in each year. (July 1, 1902, 32 Stat. 625, ch. 1352, § 7, par. 23; July 1, 1932, 47 Stat. 554, ch. 366; June 29, 1948, 62 Stat. 1109, ch. 735, § 3.)

AMENDMENT

1948—Subsec. (a) amended by act June 29, 1948, which added the second paragraph.

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That proprietors or owners of any circus shall pay a license tax of two hundred dollars per day." See § 47–2325.

TRANSFER OF FUNCTIONS

Chief of police as successor to Maior and Superintendent of Police, see note under § 4–103.

Fire chief as successor to Chief Engineer of the Fire Department, see note under § 4–402.

§ 47–2324. Swimming pools.

Owners or managers of swimming pools, indoor or outdoor, shall pay a license fee of $15 per annum. (July 1, 1902, 32 Stat. 625, ch. 1352, § 7, par. 24; July 1, 1932, 47 Stat. 554, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That owners or lessees of grounds used for horse racing, tournaments, athletic sports, baseball, football, polo, golf, and kindred games, or where feats of horsemanship are performed, to which admission fees are charged or which are used for profit or gain, directly or indirectly, shall pay a license tax of twenty dollars per week or five dollars per day." See § 47–2323.

§ 47–2325. Circuses.

Proprietors or owners of any circus transported by railroad into the District of Columbia shall pay a license fee of $3 per day for each carload of circus equipment, and proprietors or owners of any circus transported by wagons or motor trucks into the District of Columbia shall pay a license tax of $2 per day for each motor-truck load or wagon load of circus equipment, but not to exceed $250 per day. (July 1, 1902, 32 Stat. 626, ch. 1352, § 7, par. 25; July 1, 1932, 47 Stat. 554, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That owners or lessees of grounds or premises used for picnics or lawn fêtes, or resorts where theatrical or musical attractions or other amusements are presented, to which admission fees are charged or which are used for profit or gain, directly or indirectly, and which are not taxed under any other paragraph of this section, shall pay a license tax of three dollars per day or ten dollars per week and five dollars additional for each subsequent consecutive week, or for an annual license a tax of one hundred dollars."

§ 47–2326. Carnivals and fairs.

Owners or managers of carnivals or fairs, by whatsoever name called, conducted for profit or gain, and not held in any building or structure licensed under this chapter, shall pay a license fee of $35 per day. (July 1, 1902, 32 Stat. 626, ch. 1352, § 7, par. 26; July 1, 1932, 47 Stat. 554, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That owners of lessees of buildings used for skating rinks, fairs, carnivals, or amusements not otherwise provided for in this section shall pay a license tax of three dollars per day, or ten dollars for the first week and five dollars additional for each subsequent consecutive week, or for an annual license a tax of one hundred dollars." See § 47–2320.

§ 47–2327. Commission merchants in food—Bakeries—Bottling establishments—Groceries—Markets—Restaurants.

(a) Commission merchants dealing in food or food products shall pay a license fee of $5 per annum.

(b) Owners or managers of bakeries, bottling establishments, candy-manufacturing establishments, grocery stores, ice-cream manufacturing establishments, meat shops, and market stands handling food or food products shall pay a license fee of $5 per annum: *Provided,* That if any licensee hereunder shall conduct upon the same premises more than one of the callings herein listed, no additional fee shall be required.

(c) Owners or managers of delicatessens, ice-cream parlors, restaurants, soda fountains, or soft-drink establishments shall pay a license fee of $15 per annum: *Provided,* That if any licensee hereunder shall conduct upon the same premises more than one of the callings herein listed, or listed in paragraph (b) of this section, no additional fee shall be required. Within the meaning of this subparagraph a restaurant shall be any place where food or refreshments are served to transient customers to be eaten on the premises where sold.

(d) Wholesale dealers in fish or other marine products shall pay a license fee of $30 per annum.

(e) Owners or managers of dairies shall pay a license fee of $160 per annum.

(f) All dealers in food or food products not listed herein, or elsewhere in this chapter, shall pay a license fee of $5 per annum. (July 1, 1902, 32 Stat. 626, ch. 1352, § 7, par. 27; July 1, 1932, 47 Stat. 554, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That owners or lessees of shooting galleries, fencing schools, public gymnasiums, place where firearms of any description are used, or schools where the art of self-defense is

taught shall pay a license tax of twelve dollars per annum: *Provided,* That no place of business or shooting gallery where firearms are to be used shall be licensed until the inspector of buildings for the District of Columbia shall furnish a certificate that suitable precautions have been taken for the public safety by the erection of iron shields and such appliances as in his judgment may be necessary: *And provided further,* That before such license shall be issued the proprietor shall furnish to the assessor of the District of Columbia the written consent of a majority of the occupants and residents on the same side of the square or block in which the proposed gallery is to be located and also on the confronting side of the square fronting opposite to the same. The major and superintendent of police is hereby authorized to prescribe the caliber of firearms and kind of cartridges to be used in such licensed places." See § 47–2322.

CROSS REFERENCE

Conversion by commission merchants, see § 22–1208.

§ 47–2328. Classification of buildings containing living quarters for licenses—Fees—Buildings exempt from license requirement.

The Commissioners of the District of Columbia are authorized and empowered to classify, according to use, method of operation, and size, buildings containing living or lodging quarters of every description, to require licenses for the business operated in each such building as in their judgment requires inspection, supervision or regulation by any municipal agency or agencies, and to fix a schedule of license fees therefor in such amount as, in their judgment, will be commensurate with the cost to the District of Columbia of such inspection, supervision or regulation: *Provided, however,* That no license shall be required for single-family or two-family dwellings, nor for a rooming house offering accommodations for no more than four roomers. (July 1, 1902, 32 Stat. 626, ch. 1352, § 7, par. 28; July 1, 1932, 47 Stat. 555, ch. 366; July 22, 1947, 61 Stat. 402, ch. 296, § 3.)

AMENDMENTS

1947—Act July 22, 1947, amended section generally. Prior to such amendment, section read as follows: "Owners or managers of hotels shall pay a license fee of $18 per annum. Every place where food and lodging are provided for transient guests shall be regarded as a hotel."

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That proprietors or owners of apparatus or machines known as merry-go-rounds, flying horses, or similar devices for amusement shall pay a license tax of twelve dollars for the first week and ten dollars for each subsequent consecutive week, or three dollars per diem; *Provided,* That license therefore may be refused in the discretion of the Commissioners of the District of Columbia."

EFFECTIVE DATE OF 1947 AMENDMENT

Amendment of section by act July 22, 1947, effective 60 days after July 22, 1947, see section 4 of act July 22, 1947, set out as a note under § 47–2302.

NOTES TO DECISIONS

Estoppel

Where plaintiff's application for building permit showed that he wished to operate a hotel but two weeks before plaintiff got his permit Commissioners of District of Columbia had given public notice of a hearing with regard to proposed new licensing regulations, and a month after he got permit and several months before he completed his alterations, new licensing regulations were adopted providing that a building must have at least 30 bedrooms to be licensed as a hotel, and it did not appear that plaintiff was prevented from continuing to use his 18 bedroom property as before, there was no basis for estoppel against refusal to grant license to operate a hotel. *Courembis* v. *District of Columbia et al.* (1952, 193 F. 2d 18, 89 U. S. App. D. C. 372).

Fee schedule

Where statute, which expressly repealed former licensing statutes, authorized District of Columbia Commissioners to classify, according to use, method of operation and size, buildings containing living or lodging quarters, to require license for business of operating such buildings, and to fix schedule of license fee in such amount as would be commensurate with cost of inspection, supervision, or regulations, and commissioners issued order imposing on owners or managers of hotels, apartment houses, and lodging houses, same license fees as were imposed under repealed statute, schedule of fees was invalid. *District of Columbia* v. *Greenway, Inc.* (D. C. Mun. App. 1954, 103 A. 2d 872).

Hotels

Requirement in District of Columbia licensing regulations that a building must have at least 30 bedrooms in order to be licensed as a hotel was within licensing authority of Commissioners of the District of Columbia. *Courembis* v. *District of Columbia et al.* (1852, 193 F. 2d 18, 89 U. S. App. D. C. 372).

Requirement of District of Columbia licensing regulations that a building must have at least 30 bedrooms in order to be licensed as a hotel was not arbitrary. *Id.*

§§ 47–2329, 47–2330. Repealed. July 22, 1947, 61 Stat. 402, ch. 296, § 3.

Section 47–2329, acts July 1, 1902, 32 Stat. 626, ch. 1352, § 7, par. 29; July 1, 1932, 47 Stat. 555, ch. 366, prescribed the license fee payable by owners and managers of apartment houses.

Section 47–2330, acts July 1, 1902, 32 Stat. 626, ch. 1352, § 7, par. 30; July 1, 1932, 47 Stat. 555, ch. 366, prescribed the license fee payable by owners of lodging houses.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective 60 days after July 22, 1947, see section 4 of act July 22, 1947, set out as a note under § 47–2302.

§ 47–2331. Vehicles for hire—Hackers' licenses—Identification tags on vehicles—Sightseeing vehicles for school children, occasional purposes—Ambulances, private vehicles for funeral purposes—Issuance of licenses—Payment of fees.

(a) Every passenger vehicle for hire licensed under this section shall be considered a public vehicle.

(b) Any person, partnership, association, trust, or corporation operating or proposing to operate any vehicle or vehicles not confined to rails or tracks for the transportation of passengers for hire over all or any portion of any defined route or routes in the District of Columbia, except when such vehicle or vehicles are to be operated solely for sight-seeing purposes, shall, on or before the 1st day of October in each year, or before commencing such operation, submit to the Public Service Commission of the District of Columbia, in triplicate, an application for license, stating therein the name of such person, partnership, association, trust, or corporation, the number and kind of each type of vehicle to be used in such operation, the schedule or schedules and the total number of vehicle-miles to be operated with such vehicles within the District of Columbia during the twelve month period beginning with the 1st day of November in the same year: *Provided,* That the provisions of this paragraph shall not apply to companies operating both street railroad and bus services in the District of Columbia which pay taxes to the District of Columbia on their gross receipts: *Provided further,* That nothing contained in the preceding proviso shall be construed to require such companies to comply with the provisions of section 44–301. The Public Service Commission shall

thereupon verify and approve, or return to the applicant for correction and resubmission, each such statement, and when approved, forward one copy thereof to the commissioners of the District of Columbia or their designated agents and return one copy to the applicant. Upon receipt of the approved copy, and prior to the 1st day of November in the same year, or before commencing such operation, each such applicant shall pay to the collector of taxes, in lieu of any other personal or license tax, in connection with such operation, the sum of 1 cent for each vehicle-mile proposed to be operated in the District of Columbia in accordance with the application as approved. Upon presentation of the receipt for such payment, the commissioners of the District of Columbia or their designated agent shall issue a license authorizing the applicant to carry on the operations embodied in the approved application. No increase of operations shall be commenced or continued unless and until an application similar to the original and covering such increase in operation shall have been approved and forwarded in the same manner and the corresponding additional payment made and license issued. No license shall be issued under the terms of this paragraph without the approval of the Public Service Commission of the District of Columbia.

(c) Owners of passenger vehicles for hire having a seating capacity of eight passengers or more, in addition to the driver or operator, other than those licensed in paragraph (b) of this section, shall pay a license tax of $100 per annum for each vehicle used. No such vehicle shall be operated unless there shall be conspicuously displayed therein a license issued under the terms of this paragraph. Licenses issued under this paragraph shall date from April 1 of each year, but may be issued on or after March 1 of such year: *Provided, however,* That all licenses issued for a period prior to April 1, 1940, shall expire on March 31, 1940, and the license fee therefor shall be prorated accordingly.

(d) Owners of passenger vehicles for hire, whether operated from a private establishment or from public space, other than those licensed under paragraphs (b) and (c) of this section and under paragraph (i) of this section, shall pay a license tax of $25 per annum for each such vehicle used in the conduct of their business. Stands for such vehicles upon public space, adjacent to hotels or otherwise, may be established in the manner provided in section 40–603. The Public Service Commission is hereby authorized to make and enforce all such reasonable and usual police regulations as it may deem necessary for the proper conduct, control, and regulation of all vehicles described in this and the preceding paragraphs and section 47–2333. Licenses issued under this paragraph shall date from April 1 of each year, but may be issued on or after March 1 of such year: *Provided, however,* That all licenses issued for a period prior to April 1, 1940, shall expire on March 31, 1940, and the license fee therefor shall be prorated accordingly.

(e) No person shall engage in driving or operating any vehicle licensed under the terms of paragraphs (c) and (d) of this section without having procured from the commissioners of the District of Columbia or their designated agent a license which shall not be issued except upon evidence satisfactory to the director of motor vehicles under the direction of the commissioners of the District of Columbia that the applicant is a person of good moral character and is qualified to operate such vehicle, and upon payment of an annual license fee of $5. Such license shall be displayed within the vehicle at all times while the licensee is engaged in driving any vehicle licensed under the terms of paragraphs (c) and (d). Application for such license shall be made in such form as shall be prescribed to the commissioners of the District of Columbia or their designated agent. Each annual license issued under the provisions of this paragraph shall be numbered, and there shall be kept in the Department of Vehicles and Traffic a record containing the name of each person so licensed, his annual license number, and all matters affecting his qualifications to be licensed hereunder. No license issued under the provisions of this paragraph shall be assigned or transferred.

(f) All vehicles licensed under this section shall bear such identification tags as the commissioners of the District of Columbia may from time to time direct; and nothing herein contained shall exempt such vehicles from compliance with the traffic and motor-vehicle regulations of the District of Columbia, nor shall it deprive the Public Service Commission of the District of Columbia from assuming control over such vehicles, under such regulations as the Public Service Commission may from time to time adopt and promulgate: *Provided,* That nothing contained in this chapter shall be construed so as to diminish the powers conferred on the commissioners of the District of Columbia under the provisions of sections 40–301 to 40–303, 40–601 to 40–605, 40–609 to 40–611, and 40–613 to 40–615, nor to diminish the powers conferred on the Public Service Commission of the District of Columbia by said sections and by sections 40–1001 to 40–1007 creating the Public Service Commission.

(g) Nothing in this paragraph shall be construed to require the procuring of a license, or the payment of a tax, with respect to a vehicle operated for sightseeing purposes if the only passengers transported in such sightseeing operations are school children, their teachers, or escorts, and transported to the District of Columbia from the State in which their school is located in such vehicle and if a certificate for each such vehicle is obtained from the Public Service Commission of the District of Columbia. Application for such certificate shall be made to the Public Service Commission of the District of Columbia stating the name of the school, the date or dates on which such operations would be conducted, and sufficient information for identification of the vehicle to be so engaged. The said Commission shall furnish to such school a certificate for each such vehicle upon which there shall be entered the name of the school, the date or dates on which such vehicle may be operated, and identification of the vehicle for which the said certificate is granted. Such certificate shall be conspicuously displayed in or on said vehicle when operated in the District of Columbia.

(h) Nothing in this paragraph shall be construed to require the procuring of a license, or the payment of a tax, with respect to a vehicle operated for sightseeing purposes if such sightseeing operations are only occasional and the only passengers transported in such sightseeing operations are persons transported to the District of Columbia from a point or points outside of said District in such vehicle, and if a certificate for such operation is obtained from the Public Service Commission of the District of Columbia. Application for such certificate shall be made to the Public Service Commission of the District of Columbia, stating the date or dates on which occasional sightseeing operations would be conducted and the number of vehicles to be operated. The said Commission shall furnish such applicant a certificate for each such vehicle upon which shall be entered the date or dates such operations may be conducted without a license from the District of Columbia: *Provided,* That such certificates shall not be issued for such occasional sightseeing operations under the same ownership, management, control, or arrangement for a greater number of days than authorized in this paragraph. The certificate herein authorized shall be conspicuously displayed in each such vehicle when operated in the District of Columbia. The operation in the District of Columbia by the same ownership, management, control, or arrangement of any such vehicle or vehicles in sightseeing operations shall not be construed to be occasional if such ownership, management, control, or arrangement shall operate any such vehicle or vehicles for sightseeing purposes in the District of Columbia for more than fifteen calendar days in any license year. Motor vehicles transporting school children for sightseeing purposes as exempted under paragraph (g) of this section shall not be included in such computation of operations. Sightseeing operations shall not be construed to include transportation to or from the hotel or terminal en route into or out of said District.

(i) Owners of ambulances for hire and owners of passenger vehicles which, when used for hire, are used exclusively for funeral purposes shall pay a license tax of $25 per annum for each such vehicle used in the conduct of their business. Licenses issued under this paragraph shall date from April 1 in each year but may be issued on or after March 1 of each year: *Provided, however,* That licenses issued under this paragraph for the license period expiring on June 30 of any year shall remain valid until such expiration date, and the holders of such licenses, if otherwise qualified, shall be entitled to have issued to them upon expiration of such licenses new licenses for the license year beginning April 1 to be prorated for the remainder of the license year.

(j) No person shall engage in driving or operating any vehicle licensed under the terms of paragraph (i) of this section without having procured from the Commissioners of the District of Columbia or their designated agent a license which shall only be issued upon evidence satisfactory to the Director of Motor Vehicles, under the direction of the Commissioners of the District of Columbia, that the applicant is a person of good moral character and is qualified to operate such vehicle, and upon payment of an annual license fee of $5. Such license shall be carried upon the person of the licensee or in the vehicle while engaged in driving such vehicle when such vehicle is being used for hire. Application for such license shall be made in such form as shall be prescribed by the Commissioners of the District of Columbia or their designated agent. Each annual license issued under the provisions of this paragraph shall be numbered, and there shall be kept in the Department of Vehicles and Traffic a record containing the name of each person so licensed, his annual license number and all matters affecting his qualifications to be licensed hereunder. No license issued under the provisions of this paragraph shall be assigned or transferred. (July 1, 1902, 32 Stat. 626, ch. 1352, § 7, par. 31; July 1, 1932, 47 Stat. 555, ch. 366; Apr. 5, 1939, 53 Stat. 570, ch. 41; July 17, 1939, 53 Stat. 1046, ch. 313, § 3; Jan. 15, 1942, 56 Stat. 3, ch. 2; June 20, 1942, 56 Stat. 375, ch. 428; July 30, 1951, 65 Stat. 126, ch. 247, §§ 1, 2; May 18, 1954, 68 Stat. 119, ch. 218, title XIV, § 1402; July 19, 1954, 68 Stat. 493, ch. 544, § 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21.)

AMENDMENTS

1954—Par. (b) amended by act May 18, 1954, which added a proviso to the first sentence to exempt companies operating both street railways and bus services which pay gross receipts taxes, deleted the word "franchise" and substituted "1 cent" for "eight-tenths of 1 cent" in the third sentence.

Par. (e) amended by act July 19, 1954, which substituted "which shall not" for "and a badge numbered to correspond with the number of said license, neither of which shall" in the first sentence, and "at all times while the licensee is" for "and a badge numbered to correspond with the number of said license neither of which shall" in the second sentence.

1951—Par. (c) amended by act July 30, 1951, § 1, which substituted "March 1" for "March 15."

Par. (d) amended by act July 30, 1951, § 1, which substituted "March 1" for "March 15."

Par. (i) amended by act July 30, 1951, § 2, which substituted "April 1" for "July 1", and inserted the proviso.

1942—Par. (d) amended by act June 20, 1942, which added words "and under paragraph (i) of this section."

Pars. (g) and (h) added by act Jan. 15, 1942.

Pars. (i) and (j) added by act June 20, 1942.

1939—Par. (c) amended by act July 19, 1939, which substituted "April 1" for "March 1", "March 15" for "February 15", "April 1, 1940" for "March 1, 1940", and "March 31, 1940" for "February 29, 1940."

Par. (c) amended by act Apr. 5, 1939, which inserted provisions relating to the dating of licenses.

Par. (d) amended generally by act Apr. 5, 1939, which, among other changes, required licenses to date from April 1 instead of from July 1, and eliminated provisions which related to the carrying on each vehicle a number corresponding to the number of the license issued therefor.

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That owners or managers of massage establishments shall pay a license tax of twenty-five dollars per annum: *Provided,* That no license shall be issued under this paragraph without the approval of the major and superintendent of police."

CHANGE OF NAME

Act Aug. 30, 1964, substituted "Public Service Commission of the District of Columbia" for "Public Utilities Commission of the District of Columbia". See section 2–2418.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 1403 of act May 18, 1954, provided in part that: "The second section of this title [amending par. (b) of this section] shall become effective on the 1st day of November 1954."

TRANSFER OF FUNCTIONS

Reorganization Order No. 22 of the Board of Commissioners dated Dec. 2, 1952, appointed additional members to the Board of Revocation and Review of Hackers' Identification Licenses, and delegated to the Board of Revocation and Review of Hackers' Identification Licenses the power to suspend and revoke licenses issued under section 47–2331. It was further provided that in the event that the Director of Vehicles and Traffic denied an application for a license, the applicant would have a right of appeal to the Board of Revocation and Review.

Reorganization Order No. 54 of the Board of Commissioners dated June 30, 1953, and made effective Aug. 15, 1953, established under the direction and control of the Engineer Commissioner a Department of Vehicles and Traffic headed by a Director. The new department is to provide for the planning of traffic and parking facilities and the administration of motor vehicle laws. The order abolished the previously existing Board of Revocation and Review of Hackers' Identification Cards and transferred its functions to the new department. The organization of the new department as set out in the order included a Board of Revocation and Review of Hackers' Identification Cards. These orders were issued pursuant to Reorganization Plan No. 5 of 1952. The orders and plan are set out in the Appendix to Title 1, Administration.

CROSS REFERENCES

General license fee required, see § 40–103.

Prosecution of violations of laws or regulations, see § 43–907.

NOTES TO DECISIONS

Busses

This section requires, in respect of bus transportation, the licensing of vehicles rather than uses or businesses, and contemplates but one license for such a vehicle, which, under the stipulated facts operates primarily in regularly-routed passenger service and but occasionally in charter-bus and sight-seeing service, and if the drafters intended to require a separate license for occasional charter-bus and sight-seeing service, they did not provide for it. *Capital Transit Co.* v. *District of Columbia* (1937, 87 F. 2d 748, 66 App. D. C. 351).

This section is not restricted to those who are engaged in business in the District of Columbia, but it requires, in respect of bus transportation, the licensing of vehicles rather than uses or businesses. *District of Columbia* v. *Monumental Motor Tours* (1941, 122 F. 2d 195, 74 App. D. C. 147).

Construction

A taxicab is a "common carrier" and use by it of the public streets is not a right but a privilege or license which can be granted on such conditions as the Legislature may impose for the protection of the public, and this section must be construed with that purpose in mind. *Stewart* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 247).

—— With other laws

The reciprocity provision of section 40–303 exempting certain foreign vehicle owners and drivers from the requirements of a District driver's permit and District vehicle registration has no other effect, and compliance with that act exempts no one, resident or nonresident, from the license tax imposed on owners of passenger vehicles for hire having a seating capacity of eight passengers or more in addition to the driver or operator. *District of Columbia* v. *Monumental Motor Tours* (1941, 122 F. 2d 195, 74 App. D. C. 147).

Foreign busses operating in District

This section does not interfere with interstate operation as applied to a Maryland corporation and its employee operating a sightseeing bus from Baltimore to the District of Columbia by way of Annapolis and return, but interferes only with operation from point to point within the District, and hence can be constitutionally applied to them. *District of Columbia* v. *Monumental Motor Tours* (1941, 122 F. 2d 195, 74 App. D. C. 147).

License—Transferability

The license which owner of a taxicab is required to obtain is for the vehicle and not for the use or business, and is personal and not transferable. *Stewart* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 247).

Moral character of applicant

Findings of Board of Revocation and Review of Hackers' Identification Cards that two applicants for licenses to drive taxicabs were not of good moral character were supported by substantial evidence. *Green, Williams, and Tymus* v. *Silver* (D.C.D.C. 1962, 207 F. Supp. 133).

That applicant for license to drive taxicab was unable to purchase liability insurance, had violated parking regulations, and 11 years before, had had his operator's permit revoked for accumulation of traffic points did not constitute evidence as to moral fitness at time of application. *Id.*

That applicant for license to drive taxicab had been arrested in 1943 when in his early twenties, on disorderly conduct charge which government dropped was not sufficient evidence to support finding that he was not proper person to receive public vehicle operator's license in 1961. *Id.*

Board of Revocation and Review of Hackers' Identification Cards had right to consider prior arrest of applicant for public vehicle operator's license reflecting upon moral character of applicant, even though there was no trial and no conviction. *Id.*

Necessity

Taxicab owner could not operate taxicab without having taxicab operator's license, even though such operation was for his own private use, and while displaying an off-duty sign. *Stewart* v. *District of Columbia* (D. C. Mun. App. 1944, 35 A. 2d 247).

Operators license

District of Columbia Board of Commissioners had authority to delegate to Board of Revocation and Review of Hackers' Identification Cards the Commissioners' powers to grant or deny licenses to operate taxicabs and, in reviewing Board's findings, only if action of board was arbitrary or unsupported by evidence may Board's judgment be overruled. *Green, Williams, and Tymus* v. *Silver* (D.C.D.C. 1962, 207 F. Supp. 133).

Passenger vehicles for hire

Vehicles are "passenger vehicles for hire" when hired by an undertaker or lodge as clearly as when hired by individual passengers, and subject to tax. *Cave* v. *District of Columbia* (1937, 90 F. 2d 383, 67 App. D. C. 138).

Unless a restricted meaning is to be given to the word "passenger," it follows that ambulances are "passenger vehicles for hire." *Hazen* v. *Chambers* (1940, 108 F. 2d 741, 71 App. D. C. 220).

Sick or well, one who is carried, for hire, through the streets in a vehicle kept and driven by another for such purposes is considered a passenger in the ordinary sense of the word, and whether the hire is greater or less than the cost of the service is not material. *Id.*

Power to license taxicabs

Under statutes delegating to District of Columbia Public Utilities Commission power to regulate public utilities, Congress did not confer the power to grant or withhold licenses to operate taxicabs, but such power was delegated to Commissioners of the District of Columbia. *Associated Taxicabs Operators* v. *Hayes et al.* (1957, 240 F. 2d 638, 99 U. S. App. D. C. 400).

§ 47–2332. Rental or leasing of motor vehicle without driver.

The owners or managers of establishments where automobiles or other motor vehicles are kept for rent or lease without a driver shall pay a license fee of $5 per annum for each such establishment: *Provided,* That nothing in this section shall be so construed as to exempt such owners or managers from paying additional license taxes required by this chapter. (July 1, 1902, 32 Stat. 626, ch. 1352, § 7, par. 32; July 1, 1932, 47 Stat. 557, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That

mediums, clairvoyants, soothsayers, fortune tellers, or palmists, by whatsoever name called, conducting business for profit or gain, directly or indirectly, when permitted to practice their calling in the District of Columbia, shall pay a license tax of twenty-five dollars per annum: *Provided,* That no license shall be issued without the approval of the major and superintendant of police." See § 47–2342.

§ 47–2333. Vehicles hauling goods from public space.

Owners of vehicles for hire, used in hauling goods, wares, or merchandise, and operating from public space, shall pay a license tax of $25 per annum for each vehicle. Stands for such vehicles upon public space may be established in the manner provided in section 40–603. Licenses issued under this section shall date from April 1 of each year, but may be issued on or after March 15 of such year: *Provided, however,* That all licenses issued for a period prior to April 1, 1940, shall expire on March 31, 1940, and the license fee therefor shall be prorated accordingly. (July 1, 1902, 32 Stat. 626, ch. 1352, § 7, par. 33; July 1, 1932, 47 Stat. 557, ch. 366; Apr. 5, 1939, 53 Stat. 570, ch. 41; July 17, 1939, 53 Stat. 1046, ch. 313, § 3.)

AMENDMENTS

1939—Act July 17, 1939, substituted "April 1" for "March 1", "March 15" for "February 15", "April 1, 1940" for "March 1, 1940", and "March 31, 1940" for "February 29, 1940."

Act Apr. 5, 1939, inserted the sentence relating to the dating of licenses.

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That hucksters or produce dealers at large shall pay a license tax of twelve dollars per annum for each vehicle used in the conduct of their business. Licenses issued under this paragraph shall date from April first in each year. Every person who vends or sells fresh, smoked, or salt fish, meats, oysters, clams, shellfish, poultry, game, butter, eggs, vegetables, fruits, berries, candies, nuts, groceries, or produce of any kind from a vehicle of any description shall be regarded as a huckster. Every driver shall be furnished with a badge corresponding to the number of his license, which shall be worn conspicuously while transacting business, and a similar number on metal shall also be furnished him which shall be attached to his vehicle: *Provided,* That no license shall be required of any person bringing to and selling at the several markets produce of his own raising: *And provided further,* That raisers of produce shall not be exempt from the license tax imposed unless they sell such produce at the several markets or by the wholesale in cart, wagon, or carload lots." See § 47–2336.

§ 47–2334. Repairing of motor vehicles.

Owners or managers of establishments where motor vehicles of any description are washed, cleaned, greased, oiled, or repaired, for profit or gain, shall pay a license fee of $5 per annum. (July 1, 1902, 32 Stat. 627, ch. 1352, § 7, par. 34; July 1, 1932, 47 Stat. 557, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That fuel hucksters shall pay a license tax of five dollars per annum for each vehicle used in the conduct of their business. Every person who vends or sells fuel, oils, gasoline, wood, coal, and so forth, from house to house from vehicles of any description shall be regarded as a fuel huckster."

§ 47–2335. Livery stables.

Owners or managers of livery stables shall pay a license fee of $5 per annum: *Provided,* That nothing in this section shall be so construed as to exempt such owners or managers from paying additional license taxes required by this chapter. (July 1, 1902, 32 Stat. 627, ch. 1352, § 7, par. 35; July 1, 1932, 47 Stat. 557, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That peddlers shall pay a license tax of twenty-five dollars per annum. Licenses issued under this paragraph shall date from April first of each year, and one person only shall be entitled to operate thereunder. Every person who vends or sells from house to house miscellaneous articles of merchandise or personal property of any description, either as a foot peddler or selling from a vehicle, shall be regarded as a peddler." See §§ 47–2336, 47–2337.

§ 47–2336. Sales on streets or public places.

No person shall sell any article of merchandise, or anything whatever, excepting newspapers sold at large and not from a fixed location, upon the public streets, or from public space in the District of Columbia, without a license first having been obtained under this section. Persons so licensed shall be considered as venders, whether selling from a fixed location, on foot from house to house, or from a vehicle of any description, and shall pay a license tax of $12 per annum. Every vender so licensed shall be furnished with a badge corresponding to the number of his license, which badge shall be worn conspicuously whenever transacting business, and where sales are made from a vehicle such vender shall be provided with a metal plate containing a number similar to the number of his license, which plate shall be conspicuously attached to the vehicle at all times when such vender is transacting business: *Provided,* That no license shall be required of any person bringing to and selling at the several markets produce of his own raising: *And provided further,* That raisers of produce shall not be exempt from the license tax imposed unless they sell such produce at the several markets or by the wholesale in cart, wagon, or carload lots. The commissioners of the District of Columbia are hereby authorized and empowered to make, modify, and enforce necessary regulations governing the conduct upon the public streets and public spaces of venders licensed hereunder, including the power to locate the places where licensed venders on the public streets and public spaces shall stand, and to change them as often as the public interests require. (July 1, 1902, 32 Stat. 627, ch. 1352, § 7, par. 36; July 1, 1932, 47 Stat. 557, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That brewers or manufacturers of fermented liquors of any description for sale, and brewers' agents, shall pay a license tax of two hundred and fifty dollars per annum: *Provided,* That agent's license under this paragraph shall only authorize the licensee to conduct his business with the goods of the brewer represented by such agent: *And provided further,* That a licensed brewer's solicitor, whose business is confined to soliciting orders for his principal, shall not be liable for the license tax provided for in this paragraph."

CROSS REFERENCE

Police and traffic regulations, see §§ 1–224, 40–603.

NOTES TO DECISIONS

License fee

Where there was no evidence, and no clear probability, that District of Columbia license fee did not exceed cost of policing sales of religious propaganda, conviction for

selling religious magazines on streets without having paid license fee could not be sustained. *Busey* v. *District of Columbia* (1944, 138 F. 2d 592, 78 U. S. App. D. C. 189).

Purpose

This section is a regulatory measure, and its aim is not to impose a tax for general revenue purposes but to provide a fee commensurate with costs of inspection, supervision, or regulation. *Busey* v. *District of Columbia* (1944, 138 F. 2d 592, 78 U. S. App. D. C. 189).

Sale

Where defendants stood on street corner and by signs which they carried, offered magazines to the public at 5 cents each, and each defendant handed a magazine to prosecuting witness and collected 5 cents, each defendant made a "sale" within this section. *Busey* v. *District of Columbia* (1944, 138 F. 2d 592, 78 U. S. App. D. C. 189).

§ 47–2337. Solicitors.

Solicitors shall pay a license fee of five dollars per annum. Any person who goes from house to house, or place to place, within the District of Columbia, selling or taking orders for or offering to sell or take orders for goods, wares, merchandise, or any article or thing of value for future delivery, or for services to be performed in the future or for the making, manufacturing, or repairing of any article or thing whatsoever for future delivery, and requiring or accepting a deposit for such future delivery or service, shall be deemed to be a "solicitor," within the meaning of this section: *Provided, however,* That this definition shall not apply to persons selling goods, wares, merchandise, or any article or thing of value for resale to retailers in that commodity. Any person desiring a solicitor's license shall make application to the commissioners of the District of Columbia or their designated agent on forms to be provided for that purpose, stating the name of the applicant, the name and address of the person whom he represents, the class and kind of goods offered for sale, or the kind of service to be performed. Such application shall be accompanied by a bond in the penal sum of five hundred dollars, running to the District of Columbia, conditioned upon the making of final delivery of the goods ordered, or services to be performed, in accordance with the terms of such order, or failing therein, that the advance payment on such order be refunded. Any person aggrieved by the action of any such solicitor shall have the right of action on the bond for the recovery of money, or damages, or both. All orders taken by licensed solicitors shall be in writing in duplicate, stating the terms thereof and the amount paid in advance, and one copy shall be given to the purchaser. (July 1, 1902, 32 Stat. 627, ch. 1352, § 7, par. 37; July 1, 1932, 47 Stat. 557, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That distillers or rectifiers shall pay a license tax of two hundred and fifty dollars per annum."

§ 47–2338. Guides.

No person shall, for hire, guide or escort any person through or about the District of Columbia, or any part thereof, unless he shall have first secured a license so to do. The fee for each such license shall be ten dollars per annum. No license shall be issued hereunder without the approval of the major and superintendent of police. The commissioners of the District of Columbia are authorized and empowered to make reasonable regulations for the examination of all applicants for such licenses and for the government and conduct of persons licensed hereunder, including the power to require said persons to wear a badge while engaged in their calling. (July 1, 1902, 32 Stat. 627, ch. 1352, § 7, par. 38; July 1, 1932, 47 Stat. 558, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended par. 38 of act July 1, 1902, generally. Prior to such amendment, par. 38 amended section 8 of act Mar. 3, 1893, 27 Stat. 566.

TRANSFER OF FUNCTIONS

Chief of police as successor to major and superintendent of police, see note under § 4–103.

§ 47–2339. Secondhand dealers—Classification—Licensing—Stolen property.

(a) The Commissioners of the District of Columbia are authorized and empowered to classify dealers in secondhand personal property (referred to in this section as "dealers") and to fix and collect a license fee for each such class of dealer, which fee, in the judgment of the Commissioners, will be commensurate with the cost to the District of Columbia of inspection, supervision, and regulation of such class of dealer.

(b) In classifying dealers the Commissioners may take into consideration the kind of property dealt in, whether the property is retained by the dealer for sale at retail, whether the property is disposed of by the dealer out of the District of Columbia, whether the property is disposed of by the dealer as junk or otherwise, and such other criteria as the Commissioners may deem appropriate.

(c) Any person engaging in the business of buying, selling, trading, exchanging, or dealing in secondhand personal property of any description, including the return of unused portion of any ticket, order, or token purporting to evidence the right of the holder or possessor thereof to be transported by any railroad or other common carrier, however operated, from one State or Territory of the United States, or from the District of Columbia, to any other State or Territory of the United States or to the District of Columbia, shall be regarded as a dealer, and shall obtain the appropriate license and pay the fee therefor fixed by the Commissioners. For the purposes of this section, the term "secondhand personal property" shall not include any item of personal property (1) which the possessor thereof has acquired as part payment or allowance on the sale by such possessor of a new or rebuilt item of personal property, (2) which the possessor thereof has acquired by reason of its return to him for credit, refund, or exchange by a person having purchased such item from such possessor, or (3) which is offered for sale, trade, or exchange by the person who repossesses the same.

(d) When any property has been stolen and sold in the District of Columbia to a dealer under such circumstances that the Commissioners of the District of Columbia, after such dealer has been afforded a hearing, are satisfied that such dealer had cause to believe, or could have ascertained by reasonable inquiry or investigation that the property was stolen, and that the dealer did not make reasonable inquiry or investigation as to the title of the seller before making the purchase, the Commissioners are author-

ized and directed to revoke the license of such dealer; and this action shall not be a bar to criminal prosecution for receiving stolen goods: *Provided,* That nothing in this subsection shall be construed as prohibiting the Commissioners from suspending or revoking the license of such dealer under the authority contained in section 47–2345. (July 1, 1902, 32 Stat. 627, ch. 1352, § 7, par. 39; July 1, 1932, 47 Stat. 558, ch. 366; July 3, 1956, 70 Stat. 491, ch. 511, § 1.)

AMENDMENT

1956—Act July 3, 1956, amended section generally, and among other changes, empowered the Commissioners to classify dealers in secondhand personal property, authorized the fixing of license fees for each class, and eliminated provisions which required payment of a license tax of $50 per annum.

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section provided for payment of an annual tax by billposters and sign painters.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 3 of act July 3, 1956, provided that: "The first section of this Act [amending this section] shall take effect on November 1 next after the approval of this Act [July 3, 1956]."

CROSS REFERENCE

Other provisions for regulation and supervision of secondhand dealers, see §§ 1–224, 4–147.

NOTES TO DECISIONS

Dismissal of appeal

Appeal was dismissed as improvidently granted where it appeared that important question (collateral estoppel in criminal prosecutions) which court had thought would be presented was not appropriately before it. *J. O. King* v. *District of Columbia* (1965, 345 F. 2d 440, 120 U.S. App. D.C. 223).

Res judicata

Finding that defendant was not guilty of conducting business dealing in secondhand personal property without first having obtained license to do so did not bar later information alleging that same offense had been committed after first judgment. *District of Columbia,* v. *J. O. King* (D.C. App. 1964, 201 A. 2d 530).

Sales records, keeping of

Dealer in old and used phonograph records who held secondhand dealer's license was dealer in "secondhand personal property" and subject to requirement that records be kept. *A. M. Draisner* v. *District of Columbia* (D.C. App. 1965, 212 A. 2d 612).

That dealers in secondhand books were exempted from certain requirements of regulation requiring keeping of records did not require that dealer in secondhand phonograph records be similarly exempted. *Id.*

Dealer in secondhand phonograph records could not complain that record keeping regulation imposed upon him unreasonable burden where he had made no effort whatever to comply with regulation. *Id.*

It would not be assumed that regulation requiring secondhand dealers to keep certain records would be construed and applied in unreasonable manner by those whose duties it was to enforce regulation. *Id.*

Sales without license

Engaging in the business of selling secondhand property without a license was not indictable at common law. Today it is at most but an infringement of local police regulations, and its moral quality is relatively inoffensive. *District of Columbia* v. *Clawans* (1937, 57 S. Ct. 660, 300 U. S. 617, 81 L. Ed. 843).

§ 47–2340. Dealers in dangerous weapons.

Dealers in dangerous or deadly weapons shall pay a license tax of $50 per annum. No license shall issue hereunder without the approval of the major and superintendent of police, and the commissioners of the District of Columbia are authorized and empowered to make and promulgate regulations for the conduct of the business of persons licensed hereunder, including the power to require a record to be kept of all sales of deadly or dangerous weapons, to prescribe a form therefor, and to require reports of all such sales to the major and superintendent of police at such time as the Commissioners may deem advisable. (July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 40; July 1, 1932, 47 Stat. 558, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That owners or lessees of any buildings, structures, or tanks used for the storage of any description of inflammable oils in quantities exceeding five barrels shall pay a license tax of ten dollars per annum and shall have the approval of the fire marshal before license is granted."

TRANSFER OF FUNCTIONS

Chief of police as successor to major and superintendent of police, see § 4–103.

CROSS REFERENCE

Licenses of dealers of weapons, see §§ 22–3209, 22–3210.

§ 47–2341. Private detectives.

(a) Private detectives, or detective agencies, by whatsoever name called, shall pay a license tax of $100 per annum: *Provided,* That no license shall be issued under this section without the approval of the major and superintendent of police.

(b) For the purpose of this section, the term "detective" or "detective agency" shall mean and include any person, firm, or corporation engaged in the business of, or advertising, or representing himself, or itself, as being engaged in the business of detecting, discovering, or revealing crime or criminals, or securing information for evidence relating thereto, or discovering or revealing the identity, whereabouts, character, or actions of any person or persons, thing or things.

(c) It shall be unlawful for any person to engage in the business of detective, or operate, manage, or conduct a detective agency, for profit or gain, or to advertise or represent his business to be that of a detective, or that of conducting, managing, or operating a detective agency, without first obtaining a license so to do.

(d) The Commissioners of the District of Columbia are authorized and empowered to make such reasonable regulations as they deem advisable for the government and conduct of the business of private detectives licensed hereunder, and are further authorized and empowered to revoke the license of a private detective when in their judgment such is deemed advisable in the public interest.

(e) All laws which govern the Metropolitan police force of the District of Columbia in the matters of persons, property, or money shall be applicable to all private detectives licensed hereunder, and such detectives shall make like returns and dispositions of such matters as is required by existing law and the rules of the Commissioners of the District of Columbia governing the Metropolitan police department. (July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 41; July 1, 1932, 47 Stat. 559, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That owners or lessees of laundries operated otherwise than

by hand power shall pay a license tax of twenty dollars per annum. Owners or lessees of laundries operated by hand labor shall pay a license tax of ten dollars per annum."

TRANSFER OF FUNCTIONS

Chief of police as successor to major and superintendent of police, see note under § 4–103.

CROSS REFERENCE

Other provisions concerning private detectives, see §§ 4–171a to 4–174.

NOTES TO DECISIONS

Damages

$1,250 to private detective for malicious prosecution of administrative proceedings resulting in refusal to renew detective's license was not excessive in view of interruption of business, expense of defending against charge, including attorneys' fees, injury to business and personal reputation, and emotional disturbance involved. *Melvin* v. *Pence* (1942, 130 F. 2d 423, 76 U. S. App. D. C. 154, 143 A. L. R. 149).

In private detective's action for malicious prosecution based on institution of administrative proceedings resulting in refusal to renew detective's license, injury to reputation and mental suffering were proper elements of damage, and there was no error in instructions permitting those elements to be considered by jury. *Id.*

Defenses

In private detective's action for malicious prosecution based on institution of administrative proceedings resulting in refusal to renew detective's license, defendants could not successfully contend that they did not institute or instigate proceedings, where they did not deny making charge to licensing officials with intent to secure revocation of license or refusal to renew it, and defendants' complaint brought about official action and all that followed. *Melvin* v. *Pence* (1942, 130 F. 2d 423, 76 U. S. App. D. C. 154, 143 A. L. R. 149).

Instructions

In private detective's action for malicious prosecution based on institution of administrative proceedings resulting in refusal to renew detective's license, injury to reputation and mental suffering were proper elements of damage, and there was no error in instructions permitting those elements to be considered by jury. *Melvin* v. *Pence* (1942, 130 F. 2d 423, 76 U. S. App. D. C. 154, 143 A. L. R. 149).

Malicious prosecution

That private detective kept his office open for collection of money previously earned or that he later secured permission to operate pending disposition of appeal did not preclude detective from maintaining malicious prosecution action based on institution of administrative proceedings resulting in refusal to renew his license, and that factor went only to reduce his damages. *Melvin* v. *Pence* (1942, 130 F. 2d 423, 76 U. S. App. D. C. 154, 143 A. L. R. 149).

Questions for jury

In private detective's action for malicious prosecution based on institution of administrative proceedings resulting in refusal to renew detective's license, the existence of malice and the absence of probable cause were for the jury under conflicting evidence. *Melvin* v. *Pence* (1942, 130 F. 2d 423, 76 U. S. App. D. C. 154, 143 A. L. R. 149).

Renewal of license

As affecting private detective's right to maintain an action for malicious prosecution based on institution of administrative proceedings resulting in refusal to renew detective's license, absence of right of appeal to the courts was immaterial, and if some judicial element was essential, it would be supplied by fact that District Commissioners' action in arbitrarily refusing or revoking a license would be reviewable, if in no other way, by independent action in equity. *Melvin* v. *Pence* (1942, 130 F. 2d 423, 76 U. S. App. D. C. 154, 143 A. L. R. 149).

Special injury

Private detective sustained "special injury" sufficient to sustain action for malicious prosecution based on institution of administrative proceedings resulting in refusal to renew detective's license, where proceedings in no way involved protection of defendants' interests, detective's livelihood depended on license, license was in effect revoked, and for nearly a month detective was disabled from carrying on his work. *Melvin* v. *Pence* (1942, 130 F. 2d 423, 76 U. S. App. D. C. 154, 143 A. L. R. 149).

§ 47–2342. Fortune telling.

Mediums, clairvoyants, soothsayers, fortune tellers, palmists, or phrenologists, by whatsoever name called, conducting business for profit or gain, directly or indirectly, shall pay a license tax of $250 per annum. No license shall be issued hereunder without the approval of the major and superintendent of police, nor shall any license be issued hereunder to any person not an actual resident of the District of Columbia for two years next preceding his date of application: *Provided,* That no license shall be required of persons pretending to tell fortunes or practice palmistry, phrenology, or any of the callings herein listed, in a regular licensed theater, or as a part of any play, exhibition, fair, or show presented or offered in aid of any benevolent, charitable, or educational purpose: *And provided further,* That no license shall be required of any ordained priest or minister, or accredited representative of any such priest or minister, the fees for whose ministrations are not the private property of such ordained priest, minister, or accredited representative of such priest or minister. (July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 43; July 1, 1932, 47 Stat. 562, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That dealers in second-hand personal property shall pay a license tax of forty dollars per annum. Every person who buys, sells, trades, exchanges, or deals in old gold, silver, jewelry, precious stones, iron, metals of all kinds, cordage, tentage, hides, pelts, glass, rags, paper ordnance, ship chandler's stores, junk, furniture, clothing, or second-hand personal property of any description shall be regarded as a second-hand dealer." See § 47–2339.

§ 47–2343. Exposing persons or animals as targets prohibited.

No person shall set up, operate, or conduct any business or device by or in which any person, animal, or living object shall act or be exposed as a target for any ball, projectile, missile, or thing thrown or projected for or in consideration of profit or gain, directly or indirectly. (July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 44; July 1, 1932, 47 Stat. 562, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "Pawnbrokers shall continue to pay to the collector of taxes of the District of Columbia one hundred dollars for license, and be subject to the regulations prescribed by existing law."

§ 47–2344. Commissioners may regulate, modify, or eliminate license requirements.

The commissioners of the District of Columbia are authorized and empowered, when in their discretion such is deemed advisable, to require a license of other businesses or callings not listed in this chapter and which, in their judgment, require inspection, supervision, or regulation by any municipal agency or agencies and to fix the license fee therefor in such amount as, in their judgment, will be commensurate with the cost to the District of Columbia of such in-

spection, supervision, or regulation, and are further authorized and empowered in their discretion to modify any of the provisions of this chapter so far as eliminating therefrom any business or calling in this chapter required to be licensed, or to raise or lower the amount of the license fee provided in this chapter, as the cost of inspection, supervision, or regulation is raised or lowered. (July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 45; July 1, 1932, 47 Stat. 562, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "Keepers of billiard, bagatelle, jenny lind, and pool tables, shuffleboards, or any table upon which legitimate games are played within the District of Columbia for public use, or for profit or gain, shall continue to pay to the collector of taxes of the District of Columbia twelve dollars per annum license for each table and be subject to the provisions of the Act of Congress approved February twenty-five, eighteen hundred and ninety-seven, entitled 'An Act to license billiard and pool tables in the District of Columbia, and for other purposes.'" See § 47–2321.

NOTES TO DECISIONS

Amusement machines

Under this section authorizing Commissioners of District of Columbia, when in their discretion such is advisable, to require a license of other businesses or callings not listed specifically, Commissioners had power to require a license for mechanical amusements designed for use by public such as a mechanical amusement horse and was not discriminatory. *Abdow* v. *District of Columbia* (D. C. Mun. App. 1954, 108 A. 2d 374).

License required by police regulation, defining a mechanical amusement machine and providing that owners or operators of establishments in which mechanical amusement machines are offered for public use, shall obtain and pay an annual license fee as therein specified was one for regulation and not for revenue. *Id.*

Questions for jury

Whether occupant of a sleeping room with an alcove used for cooking was a roomer, having no exclusive right of possession, so that proprietor of rooming house had right to enter and inspect room at reasonable times, or was a tenant and had right to exclusive possession was for jury. *Vaughn* v. *Neal* (D. C. Mun. App. 1948, 60 A. 2d 234).

Regulations

A regulation of the commissioners of the District of Columbia defining a rooming house for licensing purposes as a building occupied for a consideration by more than four persons who are not members of owner's immediate family was valid, notwithstanding section 5–301 et seq. relating to fire escapes and safety provisions defined a rooming house as a building in which rooms are rented and sleeping quarters are provided to accommodate 10 or more persons. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562).

This section authorizing commissioners of District of Columbia when in their discretion such is advisable to require a license of other businesses or callings not listed is a proper delegation of power, and regulations promulgated thereunder are valid provided determination of commissioners is made by reasonable standards and is not arbitrary. *Id.*

Rooming houses

One who occupies a room in consideration for services rendered occupies sleeping accommodations for a "consideration", within regulations of the Commissioners of the District of Columbia defining a rooming house and requiring a license therefor. *Byrd* v. *District of Columbia* (D. C. Mun. App. 1945, 43 A. 2d 46).

Under the regulations issued by the Commissioners of the District of Columbia defining a rooming house and requiring a license therefor, it was not intended that servants be counted toward the more than four persons occupying a house. *Id.*

In the absence of contract to the contrary, one who had only a sleeping room with an alcove used for cooking, in view of District of Columbia rooming house regulations which define sleeping accommodations, was a "roomer," not a "tenant" of a self-contained "apartment" unit, and, hence, under regulations could not deny to proprietor a key to the room or the right to make reasonable inspections thereof. *Vaughn* v. *Neal* (D. C. Mun. App. 1948, 60 A. 2d 234).

§ 47–2344a. Undertakers' licenses—Qualifications—Examination—License without examination—Authority of Commissioners—Appropriations—Definitions.

(a) On and after ninety days from August 1, 1947, no person shall, in the District of Columbia, discharge any of the duties, of an undertaker, unless there has been issued to him by the Commissioners of the District of Columbia a license therefor in full force and effect. The fee for such license shall be $20 per annum, which shall be paid to the Collector of Taxes of the District of Columbia. Such license shall be issued at the time and in the manner provided in section 47–2305.

(b) An applicant for a license shall submit proof satisfactory to the Commissioners, on such forms as the Commissioners may prescribe, that he is not less than twenty-one years of age, a citizen of the United States, of good moral character; that he is a graduate of a recognized high school or educational equivalent; that he is a graduate of a school or college of embalming, whose course of instruction is not less than nine months, comprising not less than eight hundred and forty hours of study, and that he has had not less than two years' practical experience in the business or profession. Such applicant shall be examined theoretically and practically in anatomy, embalming, embalming fluids, sanitation, disinfection, the care and preparation of dead human bodies for burial and the shipment of same, laws and regulations pertaining to communicable diseases, and such other subjects as the Commissioners deem appropriate and proper.

An examination of applicants for a license shall be held not less frequently than once each year at such time and place as the Commissioners shall determine; notice of such examination shall be given at least thirty days prior to the date set therefor.

(c) Every person, who, on August 1, 1947, is registered as an undertaker with the Health Department of the District of Columbia and who was actually engaged, at any time during the five-year period immediately preceding August 1, 1947, in discharging the duties of an undertaker and who desires to continue to discharge such duties shall be entitled to a license therefor without examination upon application therefor and upon furnishing proof satisfactory to the Commissioners that he was so registered and so discharging such duties; that he is not less than twenty-one years of age, a citizen of the United States, of good moral character; and that he is a graduate of a school or college of embalming whose course of instruction is not less than nine months, comprising not less than eight hundred and forty hours of study, or that he has had actual experience equivalent thereto; and upon payment of the license fee hereinbefore provided.

(d) The Commissioners are hereby authorized:

(1) After notice and open hearing, to refuse to issue or renew or to suspend or revoke a license for fraud or misrepresentation in the application

therefor, or for misconduct during an examination therefor, or for any act or practice detrimental to the public health or safety, including the act of removing a dead human body without the prior consent of a person who, under the law, is authorized to give such consent, or for violation of the laws and regulations of the District of Columbia relating to the removal or burial or disposal of dead human bodies or the provisions of this section or of the rules and regulations hereinafter authorized to be promulgated, or for conviction of a felony as shown by a certified copy of the record of the court of conviction.

(2) To appoint a committee of five persons of good moral character, two of whom shall have been actually and continuously engaged in discharging the duties of an undertaker or embalmer in the District of Columbia for at least five years next preceding their appointment and the Health Officer of the District of Columbia, or a member of the personnel of the Health Department designated by said Health Officer, who shall serve ex officio as a member of said committee, to conduct the examination of applicants for a license hereinbefore provided; the appointment of each such person shall be for a period of one year unless sooner terminated by the Commissioners for cause; such appointees, except the Health Officer or person designated by him, shall be entitled to a per diem of $10 for each day they are actually engaged in discharging their duties pursuant to this section.

(3) To issue licenses without examination to persons licensed by other Territories and States upon the same terms and conditions as such States and Territories issue licenses without examination to persons licensed by the District of Columbia.

(4) To prescribe the terms, conditions, and license fee, not to exceed $10 per annum, under which apprenticeship shall be served.

(5) To employ, and provide for necessary travel, in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154 of title 5, U.S. Code [relating to the classification of government employees and related matters], such additional employees as may be necessary and to make such expenditures as may be necessary for the proper enforcement of the provisions of this section and the rules and regulations promulgated by authority thereof. There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated, funds to carry out the provisions of this section.

(6) To promulgate and enforce, and from time to time to alter, such rules and regulations, not inconsistent with the provisions of this section, as they deem necessary, for the proper execution and enforcement of the provisions of this section.

(7) To designate as their agent for the purpose of carrying out the provisions of this section, the Health Officer of the District of Columbia.

(e) The provisions of section 47–2301 relative to the assignment or transfer of a license and the provisions of section 47–2309 relative to the definition of the word "person" shall not apply to licenses issued under the provisions of this section. The word "person" as used in this section shall be construed to mean a natural person only, and licenses issued under the provisions of this section shall not be assignable or transferable.

(f) As used in this section the term "undertaker" includes a funeral director, mortician, embalmer, and any person who performs services with respect to the care and preparation of dead human bodies for burial or cremation. (July 1, 1902, ch. 1352, § 7, par. 44A, as added Aug. 1, 1947, 61 Stat. 711, ch. 428, and amended Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106 (a).)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509, and 7154, of title 5, U.S. Code, relating to the classification of government employees and related matters," was substituted for "the Classification Act of 1949", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENT

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

TRANSFER OF FUNCTIONS

The Department of Occupations and Professions established under the direction and control of the Board of Commissioners by Reorganization Order No. 59 as amended, includes an Undertakers' Examining Committee. This new department is established for the purpose of performing functions of the District Government concerned with licensing, registering, and regulating certain professions and occupations. The order is set out in the Appendix to Title 1, Administration, along with Reorganization Plan No. 5 of 1952.

§ 47–2345. Promulgation of regulations authorized—Suspension or revocation of licenses—Bonding of licensees authorized to collect moneys—Exemptions.

(a) The Commissioners are further authorized and empowered to make any regulations that may be necessary in furtherance of the purpose of this chapter and to suspend or revoke any license issued hereunder when, in their judgment, such is deemed desirable in the interest of public decency or the protection of lives, limbs, health, comfort, and quiet of the citizens of the District of Columbia, or for any other reason they may deem sufficient.

(b) Notwithstanding any of the provisions of this chapter requiring an inspection as a prerequisite to the issuance of a license, the Commissioners are authorized to provide by regulation that any such inspection shall be made either prior or subsequent to the issuance of a license, but any such license, whether issued prior or subsequent to a required inspection, may be suspended or revoked for failure of the licensee to comply with the laws or regulations applicable to the licensed business, trade, profession, or calling.

(c) The Commissioners may in their discretion require that any class or subclass of licensees licensed under the authority of this chapter to engage in a business, trade, profession or calling involving an

express or implied agreement to collect money for others shall give bond to safeguard against financial loss those persons with whom such class or subclass of licensees may so agree.

The bond which may be required by the Commissioners under the authority of this subparagraph shall be a corporate surety bond in an amount to be fixed by the Commissioners, but not to exceed $15,000, conditioned upon the observance by the licensee and any agent or employee of said licensee of all laws and regulations in force in the District of Columbia applicable to the licensee's conduct of the business, trade, profession, or calling licensed under the authority of this chapter, for the benefit of any person who may suffer damages resulting from the violation of any such law or regulation by or on the part of such licensee, his agent or employee.

Any person aggrieved by the violation of any law or regulation applicable to a licensee's conduct of a business, trade, profession, or calling involving the collection of money for others shall have, in addition to his right of action against such licensee, a right to bring suit against the surety on the bond authorized by this subparagraph, either alone or jointly with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, transaction, or conduct of the licensee and any agent or employee of said licensee which is in violation of law or regulation in force in the District of Columbia relating to the business, trade, profession, or calling licensed under this chapter; and the provisions of the second, third (except the last sentence thereof), and fifth subparagraphs of paragraph (b) of section 1–244, shall be applicable to such bond as if it were the bond authorized by the first subparagraph of such paragraph (b) of section 1–244: *Provided*, That nothing in this subparagraph shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished after any prior recovery or recoveries.

This subparagraph shall not be applicable to persons when engaged in the regular course of any of the following professions or businesses:

(1) Attorneys at law.

(2) Persons regularly employed on a regular wage or salary, in the capacity of creditment or in a similar capacity, except as an independent contractor.

(3) Banks and financing and lending institutions.

(4) Common carriers.

(5) Title insurers and abstract companies while doing an escrow business.

(6) Licensed real estate brokers.

(7) Employees of any class or subclass of licensees required to give bond under this subparagraph.

(July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 46; July 1, 1932, 47 Stat. 563, ch. 366; July 3, 1956, 70 Stat. 491, ch. 511, § 2; Sept. 1, 1959, 73 Stat. 447, Pub. L. 86–217, § 1; Apr. 22, 1960, 74 Stat. 72, Pub. L. 86–431, § 4.)

AMENDMENTS

1960—Subpar. (a) amended by act Apr. 22, 1960, to empower the Commissioners to suspend any license.

1959—Subpar. (c) added by act Sept. 1, 1959.

1956—Act July 3, 1956, designated existing provisions as subpar. (a) and added subpar. (b).

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "An annual license tax is hereby imposed upon the following classes of business, trades, and professions, namely: Boarding houses (public), one dollar per room; claim agents, twenty-five dollars; building and other contractors, twenty-five dollars; carriage or wagon making establishments, twenty-five dollars; cigar dealers, twelve dollars; confectionery establishments, twelve dollars; dealers of every description in the several markets, except farmers and producers, five dollars; florists, fifteen dollars; land and improvement companies, fifty dollars; undertaking establishments twenty-five dollars."

NOTES TO DECISIONS

Due process

Revocation of taxicab operator's license by Board of Revocation and Review of Hackers' Identification Licenses, on ground he had sexually assaulted and robbed citizen at gun point, was violation of due process where hearing on charges was held while criminal charges based on same alleged offense were pending. *Silver, Chairman* v. *McCamey* (1955, 221 F. 2d 873, 95 U. S. App. D. C. 318).

Temporary suspension of a license, unlike revocation, pending serious criminal charge, is not necessarily inconsistent with due process. *Id.*

Renewal of license

Roomer's act in changing lock on door and refusing to provide proprietor of rooming house with a key, thereby preventing proprietor from compliance with regulations relative to inspection and repair and jeopardizing renewal of proprietor's rooming house license sufficiently constituted "disorderly conduct" or "nuisance" and the violation of obligation of her tenancy to the injury of the proprietor so as to entitle proprietor to possession. *Vaughn* v. *Neal* (D. C. Mun. App. 1948, 60 A. 2d 234).

Delegation of authority

Broad delegation to Board of Appeals and Review of jurisdiction over appeals submitted by applicants for licenses, permits and certificates from actions taken by responsible officials of Department of Licenses and Inspections is not inconsistent with statutes giving Commissioners of District of Columbia broad authority to enact regulations including regulations which delegate jurisdiction over licenses. *S. Brown* v. *W. N. Tobriner et al.* (D.C.D.C. 1963, 218 F. Supp. 754).

Commissioners of District of Columbia could not confer absolutely upon the Board of Revocation and Review of Hackers' Identification Card the power to revoke licenses, which power had been placed in the Commissioners by statute, where statute imposed a greater duty on Commissioners than mere administrative supervision, so that Commissioners could not void or shunt way by way of delegation the duties imposed by statute. *Frazier etc., v. Silver* (D.C.D.C. 1960, 185 F. Supp. 625).

§ 47–2346. Prosecutions.

Prosecutions for violations of any of the provisions of this chapter, or of any section added hereto from time to time by the commissioners of the District of Columbia, or of any regulation made by the commissioners under authority of this chapter, shall be on information in the District of Columbia Court of General Sessions by the corporation counsel of the District of Columbia or any of his assistants. (July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 47; July 1, 1932, 47 Stat. 563, ch. 366; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section read as follows: "That any person violating any of the provisions of this section shall, on conviction thereof in the police court of the District of Columbia, be punished by a fine of not more than five hundred dollars for each offense, and in default of payment by imprisonment not exceeding thirty

days, in the discretion of the court, except as otherwise provided in this section." See § 47–2347.

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "Police Court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

NOTES TO DECISIONS

Judicial notice

The court would take judicial notice that license regulations applying to rooming houses were adopted during war emergency when thousands of people were coming to Washington to live in rooming houses and that it was vitally necessary to protect their health. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562).

Motion to quash

Whether premises on which violations of rooming house regulations allegedly occurred were within the operation of such regulations though licensed as an apartment house could not be determined on motion to quash information. *District of Columbia* v. *Basiliko* (D. C. Mun. App. 1945, 44 A. 2d 407).

Premises included

That premises were licensed as an apartment house did not preclude prosecution for violations of rooming house regulations which allegedly occurred on such premises. *District of Columbia* v. *Basiliko* (D. C. Mun. App. 1945, 44 A. 2d 407).

§ 47–2347. Penalties.

Any person violating any of the provisions of this chapter, or additions thereto made from time to time by the commissioners of the District of Columbia, where no specific penalty is fixed, or the violation of any regulation made by the commissioners under the authority of this chapter, shall upon conviction be fined not more than $300 or imprisoned for not more than ninety days. Any person failing to file any information required by this chapter, or by any regulation of the commissioners of the District of Columbia made under the provisions hereof, or who in filing any such information makes any false or misleading statement, shall upon conviction be fined not more than $300 or imprisoned for not more than ninety days. (July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 48; July 1, 1932, 47 Stat. 563, ch. 366.)

AMENDMENT

1932—Act July 1, 1932, amended section generally. Prior to such amendment, section defined terms used in this chapter. See § 47–2307.

NOTES TO DECISIONS

Fines

Where fine of $150 imposed on one convicted of operating rooming house without a license was only half of the maximum permitted by statute, fine could not be termed excessive as a matter of law by Municipal Court of Appeals on appeal and could not be reduced. *Tillman* v. *District of Columbia* (D. C. Mun. App. 1951, 77 A. 2d 316).

Trial by jury

The penalty imposed by this section is not one as to which there is a constitutional right to a trial by jury. *District of Columbia* v. *Clawans* (1937, 57 S. Ct. 660, 300 U. S. 617, 81 L. Ed. 843).

A single offense of using premises for a purpose other than a single family dwelling without an occupancy permit or of operating a rooming house without a license, is a petty offense not involving moral turpitude nor indictable at common law, and therefore a jury trial is not demandable as of right. *Savage* v. *District of Columbia* (D. C. Mun. App. 1947, 54 A. 2d 562).

Where accused was charged under three separate informations which were consolidated for trial, with using premises without a certificate of occupancy, operating the premises as a rooming house between certain dates without a license, and using the same premises as a rooming house without a license between certain other dates, jury trial was properly denied. *Id.*

§ 47–2348. Saving clause.

Any violation of any provision of law or regulation issued hereunder which is repealed by this chapter and any liability arising under such provisions or regulations may, if the violation occurred or the liability arose prior to such repeal, be prosecuted to the same extent as if this chapter had not been enacted. (July 1, 1902, ch. 1352, § 7, par. 49, as added July 1, 1932, 47 Stat. 563, ch. 366.)

§ 47–2349. Separability of provisions.

If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the chapter and the applicability of such provision to other persons and circumstances shall not be affected thereby. (July 1, 1902, ch. 1352, § 7, par. 50, as added July 1, 1932, 47 Stat. 563, ch. 366.)

§ 47–2350. Refund of erroneously-paid fees.

The commissioners of the District of Columbia are authorized to refund any license fee or tax, or portion thereof, erroneously paid or collected under this chapter. (July 1, 1902, ch. 1352, § 7, par. 51, as added July 1, 1932, 47 Stat. 563, ch. 366.)

CROSS REFERENCE

General provisions for refund of fees and taxes, see § 47–1016 et seq.

Chapter 24.—DISTRICT OF COLUMBIA TAX COURT

Sec.
47–2401. Tax appeals—Definitions.
47–2402. Board of Tax Appeals—District of Columbia Tax Court.
47–2403. Appeal from assessment—Hearing and decision.
47–2404. Review by court—Procedure—Decision of Board, when final—Modification or reversal.
47–2405. Appeals of real estate assessments.
47–2406. Appeal from imposition of tax involuntarily paid—Suit.
47–2407. Refund of erroneous collections.
47–2408. Rules of procedure.
47–2409. Summons—Authority to take testimony.
47–2410. Certain suits forbidden.
47–2411. Manner of serving notices.
47–2412. Reference by Commissioners to the Board.
47–2413. Overpayments—Board of Tax Appeals.
47–2414. Reestablishment of Board.

§ 47–2401. Tax appeals—Definitions.

In the interpretation of this chapter, unless the context indicates a different meaning—

The word "tax" means the tax or taxes mentioned in this chapter.

The word "appeal" means the appeal provided in this chapter.

The word "board" means the Board of Tax Appeals for the District of Columbia created by this chapter.

The word "commissioners" means the commissioners of the District of Columbia or their duly authorized representative or representatives.

The word "District" means the District of Columbia.

The word "person" includes any individual, firm, copartnership, joint adventure, association, corporation (domestic or foreign), trust, estate, or receiver.

The word "court" shall mean the United States Court of Appeals for the District of Columbia.

The word "assessor" shall mean the assessor of the District of Columbia.

The words "Board of Equalization and Review" shall mean the Board of Equalization and Review of the District of Columbia. (Aug. 17, 1937, ch. 690, title IX, § 1, as added May 16, 1938, 52 Stat. 370, ch. 223, § 8.)

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court and the member thereof to be known as the judge of the District of Columbia Tax Court, see § 47–2402.

§ 47–2402. Board of Tax Appeals—District of Columbia Tax Court.

The commissioners shall appoint a board of one person, subject to removal by the commissioners, to be called the "Board of Tax Appeals for the District of Columbia," which person shall be a citizen of the United States. Such person shall be appointed for the term of ten years, except such appointment as may be made for the remainder of an unexpired term. Any vacancy caused by death, resignation, or otherwise shall be filled by the commissioners only for an unexpired term. Such person shall be eligible for reappointment. Such person shall be an attorney and in active practice of law for at least ten years next preceding his appointment.

The salary of such person so appointed shall be $23,500 per annum. The commissoners are authorized to employ such other personal servces as may be necessary to carry out the provisons of this chapter and to provide for the expenses of the board. The salaries of employees other than the board shall be fixed in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters], but such employees shall be appointed without regard to civil-service requirements. The commissioners shall include in their annual estimates such amounts as may be required for the salaries and expenses herein authorized.

The Board of Tax Appeals for the District of Columbia shall hereafter be known as the District of Columbia Tax Court and the member thereof shall be known as the judge of the District of Columbia Tax Court. The said District of Columbia Tax Court shall not be deemed or held to be a constituent member of the assessing or taxing authority of the District of Columbia but shall be deemed to be an independent agency, separate and apart from such assessing and taxing authority. All references in any statute (except this paragraph) to the Board of Tax Appeals or to the Board when used in the sense of the Board of Tax Appeals for the District of Columbia, or to the member thereof shall be considered to be made to the District of Columbia Tax Court and to the judge thereof, respectively.

Whenever the judge of the District of Columbia Tax Court shall be unable to hear and determine any case, or if said judge shall disqualify himself from hearing and determining any case, or if that office should become vacant, the Commissioners are authorized in their discretion to appoint any member in good standing of the bar of the United States District Court for the District of Columbia to hear and determine such case or cases in the place and stead of the duly appointed judge, or of the duly appointed judge who has vacated that office: *Provided,* That, if the office of judge of the District of Columbia Tax Court shall become vacant, no such vacancy shall be deemed to exist for the purposes of this paragraph after the expiration of one hundred and twenty days, except that the person appointed to fill the temporary vacancy may and shall determine all cases the hearing of which commenced within such one hundred and twenty days. Any person appointed under this paragraph to act in the place and stead of the duly appointed judge of the District of Columbia Tax Court, or so to act while that office is vacant, shall take the oath of office and shall be paid on a per diem basis in an amount to be determined by the Commisisoners and paid out of the annual appropriation for the District of Columbia Tax Court. No action taken under this paragraph shall operate to reduce the salary of the duly appointed judge of the District of Columbia Tax Court. No person employed by the United States or by the District of Columbia shall be appointed under this paragraph.

The judge of the District of Columbia Tax Court may hereafter retire—

(1) after having served as a judge of such court for a period or periods aggregating twenty years or more, whether continuously or not;

(2) after having served as a judge of such court for a period or periods aggregating ten years or more, whether continuously or not, and having attained the age of seventy years; or

(3) after having become permanently disabled from performing his duties, regardless of age or length of service.

Such judge may retire for disability by furnishing to the Commissioners of the District of Columbia a certificate of disability signed by the chief judge of the United States District Court for the District of Columbia. The judge who retires under this section shall receive annually in monthly installments, during the remainder of his life, a sum equal to such proportion of the salary received by such judge at the time of such retirement as a total of his aggregate years of service bears to the period of thirty years, the same to be paid in the same manner as the salary of such judge. In no event shall the sum received by such judge hereunder be in excess of the salary of such judge at the time of such retirement. In computing the years of service under this section, service in the Board of Tax Appeals of the District of Columbia, as heretofore constituted, shall be included whether or not such service be continuous.

(a) The term "retire" as used in this section shall mean and include retirement, resignation, or failure of reappointment upon the expiration of the term of office of incumbent.

(b) Any judge receiving retirement salary other than for disability under the provisions of this section may be called upon by the Commissioners of the District of Columbia to perform such judicial duties as may be requested of him in said court,

but in any event no such retired judge shall be required to render such service for more than ninety days in any calendar year after such retirement. In case of illness or disability precluding the rendering of such service such retired judge shall be fully relieved of any such duty during such illness or disability. (Aug. 17, 1937, ch. 690, title IX, § 2, as added May 16, 1938, 52 Stat. 370, ch. 223, § 8, and amended July 26, 1939, 53 Stat. 1108, ch. 367, title IV, § 5(a); Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); July 10, 1952, 66 Stat. 547, ch. 649, § 5; July 11, 1955, 69 Stat. 290, ch. 302, § 3; July 2, 1956, 70 Stat. 485, ch. 494, § 1; Aug. 14, 1964, 78 Stat. 431, Pub. L. 88–426, § 306(i)(4).)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENTS

1964—Section 306(i)(4) of act Aug. 14, 1964, amended the first sentence of the second paragraph by striking out $17,500 and inserting in lieu thereof $23,500, thus increasing the salary of the Judge to $23,500.

1956—Act July 2, 1956, increased the term of office from four years to ten years, and inserted the provisions relating to retirement of the judge of the District of Columbia Tax Court.

1955—Act July 11, 1955, increased the salary from $13,000 to $17,500.

1952—Act July 10, 1952, increased the salary from $8,000 to $13,000, and added the third and fourth paragraphs redesignating the Board of Tax Appeals as the District of Columbia Tax Court and authorizing the Commissioners to appoint a member of the bar of the United States District Court for the District of Columbia to act in place and stead of the judge whenever he is unable to hear and determine any case, if he disqualifies himself, or if the office is vacant.

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

1939—Act July 26, 1939, increased the salary from $7,500 to $8,000.

EFFECTIVE DATE OF ACT AUG. 14, 1964

See note to section 1–204a.

GROUP INSURANCE PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204.

RETROACTIVE SALARY PROVISIONS OF ACT AUG. 14, 1964

See note to section 1–204a.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act July 2, 1956, provided that: "The amendment to the first paragraph of section 2 of title IX of the District of Columbia Revenue Act of 1937, set forth in the first section of this Act [to the first paragraph of this section], shall take effect after the expiration of the term of office of the present judge of the District of Columbia Tax Court."

NOTES TO DECISIONS

Choice of remedy

Under District of Columbia Code to effect that administrative remedy for recovery of taxes shall not be deemed to take away from taxpayer any remedy which he might have had under any other provision of law, taxpayer is permitted recourse to either administrative remedy or common-law suit for recovery of District of Columbia taxes, and inasmuch as decision of Tax Court or filing of an appeal with that court precludes taxpayer from filing suit under his common-law remedy, exhaustion of administrative remedy can in no sense be a condition precedent to a common-law action. *District of Columbia* v. *J. C. Brady* (1960, 288 F. 2d 108, 109 U.S. App. D.C. 324).

Nature of Board

The Board of Tax Appeals for the District of Columbia is not a "court" but it is an "administrative agency" to which a taxpayer seeking relief may appeal an alleged excessive assessment of the Board of Equalization and Review. *Watrous* v. *District of Columbia* (1943, 135 F. 2d 654, 77 U. S. App. D. C. 295).

The Board of Tax Appeals for the District of Columbia is an "administrative agency" established to furnish more efficient, speedy, and less expensive method of determining validity of assessments, and is "quasi judicial" in nature, but is not a "court". *Lindner* v. *District of Columbia* (D.C. Mun. App. 1943, 32 A. 2d 540).

§ 47–2403. Appeal from assessment—Hearing and decision.

Any person aggrieved by any assessment by the District against him of any personal-property, inheritance, estate, business-privilege, gross-receipts, gross-earnings, insurance-premiums, or motor-vehicle-fuel tax or taxes, or penalties thereon, may, within ninety days after notice of such assessment, appeal from such assessment to the board, provided such person shall first pay such tax, together with penalties and interest due thereon, to the collector of taxes of the District of Columbia. The mailing to the taxpayer of a statement of taxes due shall be considered notice of assessment with respect of such taxes. The board shall hear and determine all questions arising on said appeal and shall make seprate findings of fact and conclusions of law, and shall render its decision thereon in writing. The board may affirm, cancel, reduce, or increase such assessment. (Aug. 17, 1937, ch. 690, title IX, § 3, as added May 16, 1938, 52 Stat. 371, ch. 223, § 8, and amended July 26, 1939, 53 Stat. 1108, ch. 367, title IV, § 5 (b); July 10, 1952, 66 Stat. 543, ch. 649, § 3 (a).)

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court and the member thereof to be known as the judge of the District of Columbia Tax Court, see § 47–2402.

AMENDMENTS

1952—Act July 10, 1952, deleted the provision which required protest to the collector of taxes of the District of Columbia to be in writing.

1939—Act July 26, 1939, including assessment of motor-vehicle-fuel taxes.

NOTES TO DECISIONS

Generally

Prior to creation of Board of Tax Appeals for District of Columbia, taxpayer was subject to common-law rule prohibiting challenge of tax unless involuntarily paid, and a mere statement tax is being paid under protest does not make it an "involuntary payment". *Lindner* v. *District of Columbia* (D.C. Mun. App. 1943, 32 A. 2d 540).

Burden of proof

Taxpayer asserting invalidity of personal property assessment has the burden of proof. *District of Columbia* v. *Morris* (1947, 159 F. 2d 13, 81 U. S. App. D. C. 356).

Construction

There is no conflict between this section and § 47–1604; they are merely alternative. *Rynex* v. *District of Columbia* (1940, 114 F. 2d 842, 72 App. D. C. 386).

This section was general section applicable to all taxes referred to therein, and to all time situations which might

arise, and reference to interest and penalties was used in respect of taxes whose due dates might antedate expiration of 90 days after receipt of notice of assessment within which appeal was to be taken. *Id.*

Election of remedies

As to taxpayer paying voluntarily, this chapter creating Board of Tax Appeals for District of Columbia created new right and the remedy provided by it is exclusive, but, as to taxpayer paying involuntarily within common-law meaning, remedy before the board is cumulative and such taxpayer may elect between statutory remedy and common-law remedy. *Linder* v. *District of Columbia* (D.C. Mun. App. 1943, 32 A. 2d 540).

Estoppel

Taxpayer was not estopped from denying, for personal property tax purposes, the figures set up by her in her income tax returns for depreciation purposes. *District of Columbia* v. *Morris* (1947, 159 F. 2d 13, 81 U. S. App. D. C. 356).

Exclusiveness of remedies

A taxpayer may contest validity of tax voluntarily paid, which is a new right created by this chapter establishing Board of Tax Appeals for District of Columbia, and remedy provided by this chapter is the only remedy for such right. *Linder* v. *District of Columbia* (D.C. Mun. App. 1943, 32 A. 2d 540).

The remedy before Board of Tax Appeals for District of Columbia, afforded an aggrieved taxpayer, is not exclusive of common law remedy. *Id.*

Exemption of real estate

Commissioners of District of Columbia had no power to exempt real estate of institutional owner where application for exemption came after property had been assessed for year, and an appeal within ninety days after the tax statement was mailed was its only remedy. *Congregational Home of District of Columbia* v. *District of Columbia* (1953, 202 F. 2d 808, 92 U. S. App. D. C. 73).

Jurisdiction

Where the Board of Tax Appeals for the District of Columbia was without jurisdiction of a claim for refund of part of business privilege tax because there had been no overpayment when claim was made, the stipulation of the parties could not confer jurisdiction. *J. E. Dyer & Co.* v. *District of Columbia* (1941, 115 F. 2d 945, 73 App. D. C. 52).

Parties

A national bank claiming that it was discriminated against by administrative application of §§ 47–1701, 47–1703, imposing tax on gross earnings of banks, was entitled to maintain proceeding before Board of Tax Appeals notwithstanding absence of bank favored by the administrative practice. *Hamilton Nat. Bank.* v. *District of Columbia* (1946, 156 F. 2d 843, 81 U.S. App. D.C. 200, certiorari denied 70 S. Ct. 241, 338 U. S. 891, 94 L. Ed. 547).

Payment of tax

Where donee's grandsons did not pay District of Columbia inheritance tax which was required by will to be paid by residuary legatee, they were not entitled to appeal from the assessment. *District of Columbia* v. *Fadeley et al.* (1956, 233 F. 2d 667, 98 U. S. App. D. C. 176, certiorari denied 77 S. Ct. 64, 352 U. S. 847, 1 L. Ed. 2d 57).

Where corporation delivered to examiner in office of District of Columbia Assessor of Taxes, checks in respect to business privilege tax assessed against corporation, and a letter protesting the tax, and Assessor's office handed on the checks to office of Collector of Taxes, there was sufficient payment of tax to Collector to permit an appeal by corporation to District of Columbia Board of Tax Appeals. *Owens-Illinois Glass Co.* v. *District of Columbia* (1953, 204 F. 2d 29, 92 U. S. App. D. C. 15).

The requirement of this section that one who appeals to the Board of Tax Appeals for the District of Columbia shall first pay such tax is jurisdictional. *Industrial Bank of Washington* v. *District of Columbia* (1951, 188 F. 2d 46, 88 U. S. App. D. C. 233).

Under section 47–1604, providing for payment of inheritance tax within 18 months after decedent's death, and this section the payment of the tax within 90 days after receipt of notice of assessment was condition precedent to the taking of the appeal. *Rynex* v. *District of Columbia* (1940, 114 F. 2d 842, 72 App. D. C. 386).

Person aggrieved

Though inheritance tax of District of Columbia on certain dispositions of property was technically not assessed against legatee, assessment was "against him" for all practical purposes where he was required under terms of will to pay same, and he could appeal under this section as a "person aggrieved" by any assessment "against him." *District of Columbia* v. *Fadeley et al.* (1956, 233 F. 2d 667, 98 U. S. App. D. C. 176, certiorari denied 77 S. Ct. 64, 352 U. S. 847, 1 L. Ed. 2d 57).

Generally an executor is not "person aggrieved" for purposes of an appeal to Tax Court unless either estate as whole is directly affected by decision appealed from, or unless his individual interests are directly and personally affected thereby. *Id.*

Personal property

When personal property assessment is challenged and is brought before the Board of Tax Appeals, the issue is the correct fair cash value, not merely the basis upon which the assessor proposed his assessment. *District of Columbia* v. *Morris* (1947, 159 F. 2d 13, 81 U. S. App. D. C. 356).

Remedy as cumulative

Congress may provide an exclusive administrative remedy for recovery of illegally collected taxes, or abolish common-law right of action and substitute new statutory right, but, unless so declared expressly or impliedly, statutory remedy is "cumulative" of common law remedy. *Linder* v. *District of Columbia* (D.C. Mun. App. 1943, 32 A. 2d 540).

Tax Court's authority

Tax Court was not precluded, by lack of regulatory formula, from determining income fairly attributable to District of Columbia for franchise tax purposes but could determine such amount by applying applicable tax regulations and using formula Tax Court deemed best suited to determine such income. *District of Columbia* v. *Gallant Incorporated; Gallant Incorporated* v. *District of Columbia* (1961, 290 F. 2d 745, 110 U.S. App. D.C. 202).

Time to appeal

Requirement that appeal be taken within 90 days after notice of assessment of realty tax is jurisdictional to the appeal. *Jewish War Veterans etc.* v. *District of Columbia* (1957, 243 F. 2d 646, 100 U. S. App. D. C. 223).

Taxpayer could not toll running of 90 days period within which to appeal real estate tax assessment by merely returning to assessor the notice of assessment which taxpayer received and which determined beginning of the period. *Id.*

The statute requires payment of the tax within 90 days after receipt of assessment as a condition precedent to the taking of an appeal although this due date falls before the end of the 18 months provision fixed by § 47–1604, *Rynex* v. *District of Columbia* (1940, 114 F. 2d 842, 72 App. D. C. 386).

See, also, *J. E. Dyer & Co.* v. *District of Columbia* (1941, 115 F. 2d 945, 73 App. D. C. 52).

Where taxpayer overpaid its business privilege tax only because, on its own responsibility, it made incorrect returns and underpaid its personal property taxes, claim that business privilege taxes should be abated to extent of additional payment of tangible personal property taxes was barred in view of fact that appeal to Board of Tax Appeals was made more than 90 days after notice of assessment of business privilege taxes. *Hecht Co.* v. *District of Columbia* (1942, 129 F. 2d 353, 76 U. S. App. D. C. 142).

§ 47–2404. Review by court—Procedure—Decision of Board, when final—Modification or reversal.

(a) The decision of the Board may be reviewed by the court as hereinafter provided if a petition for such review is filed by either the District or the taxpayer within thirty days after the decision is rendered. Such petition for review shall be filed with the Board, and shall be in such form as the Board by regulation shall provide. Upon such review the

court shall have the power to affirm, modify, or reverse the decision of the Board with or without remanding the case for hearing as justice may require. The court shall have the exclusive jurisdiction to review the decisions of the Board in the same manner and to the same extent as decisions of the United States District Court for the District of Columbia in civil actions tried without a jury; and the judgment of the court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari in the manner provided in title 28, United States Code, section 1254, as amended. The court is authorized to adopt rules for the filing of the record on review, the preparation of the record for review, and the conduct of the proceedings upon such review.

(b) The board is authorized to fix a fee, not in excess of the fee usually charged and collected therefor by the clerk of the United States District Court for the District of Columbia, for comparing and preparing the transcript of record, and to fix charges for supplying copies of testimony or copies of other documents and papers. The fees and charges so fixed shall be paid to the collector of taxes of the District and deposited in the treasury of the United States to the credit of the District of Columbia.

(c) The decision of the board shall become final (1) upon the expiration of the time allowed for filing a petition for review, if no such petition be duly filed within such time; or (2) upon the expiration of time allowed for filing of petition for certiorari if the decision of the board has been affirmed or the petition for review dismissed by the court, or no petition for certiorari has been filed; or (3) upon denial of a petition for certiorari if the decision of the board has been affirmed or the petition for review dismissed by the court; or (4) upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the decision of the board be affirmed or the petition for review dismissed.

(d) If the Supreme Court directs that the decision of the board be modified or reversed, the decision of the board rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered unless within such thirty days either the District or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Board shall become final when so corrected.

(e) If the decision of the board is modified or reversed by the court and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the decision of the board rendered in accordance with the mandate of the court shall become final upon the expiration of thirty days from the time such decision of the board was rendered, unless within such thirty days either the District or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the board shall become final when so corrected.

(f) If the Supreme Court orders a rehearing, or if the case is remanded by the court for rehearing and if (1) the time allowed for filing of a petition for certiorari has expired and no such petition has been duly filed; or (2) the petition for certiorari has been denied; or (3) the decision of the court has been affirmed by the Supreme Court, then the decision of the board rendered upon such rehearing shall become final in the same manner as though no prior decision of the board had been rendered.

(g) As used in this section the term "mandate," in case a mandate has been recalled prior to the expiration of thirty days from the date of the issuance thereof, means the final mandate. (Aug. 17, 1937, ch. 690, title IX, § 4, as added May 16, 1938, 52 Stat. 371, ch. 223, § 8, and amended June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 10, 1952, 66 Stat. 544, ch. 649, § 3 (b).)

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court and the member thereof to be known as the judge of the District of Columbia Tax Court, see § 47–2402.

AMENDMENT

1952—Subsec. (a) amended by act July 10, 1952, which substituted "the court shall have the power to affirm, modify, or reverse the decision of the Board" for "the court shall have the power to affirm, or if the decision of the Board is not in accordance with law, to modify or reverse the decision of the Board", "decisions of the Board in the same manner and to the same extent as decisions of the United States District Court for the District of Columbia in civil actions tried without a jury; and" for "decisions of the Board, and", and "title 28, United States Code, section 1254" for "section 347, Title 28, U.S. Code", and eliminated provisions which stated that the findings of fact by the Board shall have the same effect as a finding of fact by an equity court or a verdict of a jury.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

NOTES TO DECISIONS

Administrative review

Except in cases of absolute exemption, the tax exemption in each year is dependant on the use to which property is put, and original determination of exemption or absence thereof is largely an administrative question for the assessing authorities, and administrative review is available to the Tax Court and review of its decision is available in the United States Court of Appeals for the District of Columbia. *Workshop Center of the Arts* v. *District of Columbia* (D.C. Mun. App. 1958, 145 A. 2d 571).

Conclusions of law

The District of Columbia Tax Court's conclusions of law, even if considered factual, are not binding on Court of Appeals if clearly erroneous. *District of Columbia* v. *Seven-Up Washington, Inc.* (1954, 214 F. 2d 197, 93 U. S. App. D. C. 272, certiorari denied 74 S. Ct. 851, 347 U. S. 989, 98 L. Ed. 1123).

Conclusiveness of findings

In proceedings to review assessment of inheritance tax in the District of Columbia, involving question of whether decedent was domiciled in Florida or in the District, Court of Appeals, convinced that Board of Tax Appeals was clearly wrong in finding that decedent was domiciled in the District, could not set aside board's determination. *District of Columbia* v. *Pace* (1944, 64 S. Ct. 406, 320 U. S. 698, 88 L. Ed. 408).

Rule 52 of the Federal Rules of Civil Procedure, U. S. Code, title 28, Appendix, relating to review of findings of fact generally would not supersede special statutory measure of review of decisions of Board of Tax Appeals of District of Columbia. *Id.*

The Court of Appeals for the District of Columbia has power to review decisions of Board of Tax Appeals for the District as under equity practice in which whole case, both facts and law, are open for consideration, subject to rule that findings of fact are treated as presumptively correct and accepted unless clearly wrong. *Id.*

In proceeding for review of decision of District of Columbia Board of Tax Appeals that decedent died domiciled in District of Columbia so as to subject his property to inheritance taxes imposed by District of Columbia Code, and that decedent had not retained domicile in state from which he had come to District of Columbia to work for the Government, findings of Board were required to be accepted when not clearly wrong. *Weitknecht* v. *District of Columbia* (1952, 195 F. 2d 570, 90 U. S. App. D. C. 291, certiorari denied 73 S. Ct. 47, 344 U. S. 837, 97 L. Ed. 651).

Where taxpayer was organized for purpose of lending money on realty but it acquired realty by foreclosure, finding of Board of Tax Appeals that the realty was held primarily for sale to customers in ordinary course of business, so that profits on sales were taxable as ordinary income and not as profits derived from sale of "capital assets", was not clearly wrong and could not be disturbed. *Real Estate Mortgage & Guaranty Corporation* v. *District of Columbia* (1944, 141 F. 2d 361, 78 U. S. App. D. C. 390).

A finding of fact by Board of Tax Appeals for District of Columbia will not be disturbed on appeal unless clearly erroneous. *Connecticut Ave. Cafe* v. *District of Columbia* (1948, 169 F. 2d 304, 83 U. S. App. D. C. 272).

Payment under protest

When taxpayer who had been previously taxed on basis of his equitable interest in marginal stocks but is then reassessed by tax authorities for full value, a payment under protest raises the question whether such new assessment was without authority of law. *Hunt* v. *District of Columbia* (1940, 108 F. 2d 10, 71 App. D. C. 143).

Questions not raised below

On taxpayer's petition to review decision of Board of Tax Appeals for the District of Columbia redetermining petitioner's income tax for 1939 imposed by District of Columbia, petitioner could not question the amount of its gross receipts found by the District and the Board of Tax Appeals where no such question was raised before the Board, and petitioner had stipulated that the only issue was the correctness of the District's action in using the ratio of District sales to total sales as the sole basis for apportioning petitioner's net income. *Eastman Kodak Co.* v. *District of Columbia* (1942, 131 F. 2d 347, 76 U. S. App. D. C. 339).

Remand

A remainder interest under a trust, under applicable regulation, in absence of evidence relating to value filed with assessor, would not be deemed to establish a presumption conclusive in the Tax Court that such remainder was without value, but under such regulation remainderman had burden of introducing such evidence as would enable Tax Court to find market value of remainder was less than figure on which tax was assessed, but in view of remainderman's misinterpretation of such regulation, decision denying him relief would be set aside and remanded to permit remainderman to introduce evidence of market value. *The Alabama Polytechnic Institute* v. *District of Columbia* (1958, 250 F. 2d 408, 102 U. S. App. D. C. 83).

The United States Court of Appeals for the District of Columbia, upon finding invalid the prevailing administrative practice in assessment of gross earnings tax against banks in District of Columbia, remanded case with instructions to cancel assessment unless tax assessor upon re-examination of entire subject removed discriminations. *Hamilton Nat. Bank* v. *District of Columbia* (1946, 156 F. 2d 843, 81 U. S. App. D. C. 200, certiorari denied 70 S. Ct. 241, 338 U. S. 890, 94 L. Ed. 546).

Where taxpayer pleaded that proposed valuations of personal property were in excess of fair cash value of property, an issue of fact was presented which should have been resolved by a finding and the lack of a finding and conclusion on the point required the remandment of the case to Board of Tax Appeals. *District of Columbia* v. *Morris* (1947, 159 F. 2d 13, 81 U. S. App. D. C. 356).

Time for filing petition

Where District of Columbia Board of Tax Appeals on April 30, 1951, rendered decision on corporation's appeal in respect to business privilege tax, and corporation filed review petition which was served on District of Columbia on May 31 shortly before Board closed its office at 4:45 p. m., and the District with knowledge of sole member of Board, who had been consulted by telephone at his home, put cross-petition for review under door of Board's office an hour later, District's cross-petition was timely filed within this section requiring petition for review to be filed by District or taxpayer within 30 days after decision. *Owens-Illinois Glass Co.* v. *District of Columbia* (1953, 204 F. 2d 29, 92 U. S. App. D. C. 15).

§ 47–2405. Appeals of real estate assessments.

Any person aggrieved by any assessment, equalization, or valuation made pursuant to sections 47–708 and 47–709, may within ninety days after October 1 of the year in which such assessment, equalization, or valuation is made, appeal from such assessment, equalization, or valuation in the same manner and to the same extent as provided in sections 47–2404 and 47–2413: *Provided, however,* That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided, except that, in case of increase of valuation of real property over that for the immediately preceding year, where no notice in writing of such increase of valuation is given the taxpayer prior to March 1 of the particular year, no such complaint shall be required for appeal.

Any person aggrieved by any assessment or valuation made in pursuance of section 47–710 may, within ninety days after October 15 of the year in which said valuation or assessment is made, appeal from such assessment or valuation in the same manner and to the same extent as provided in sections 47–2404 and 47–2413: *Provided, however,* That if the taxpayer shall be notified in writing not later than September 1 of a particular year of the valuation of the real estate valued in accordance with section 47–710, such taxpayer shall first make a complaint to the Board of Equalization and Review respecting such assessment as herein provided.

Any person aggrieved by any assessment made in pursuance of section 47–711 may, within ninety days after April 15 of the year in which such assessment is made, appeal from such assessment in the same manner and to the same extent as provided in sections 47–2404 and 47–2413: *Provided, however,* That if the taxpayer shall be notified in writing not later than March 1 of a particular year of the valuation of the real estate valued in accordance with section 47–711, such taxpayer shall first make a complaint to the Board of Equalization and Review respecting such assessment as herein provided.

Any person aggrieved by any reassessment made in pursuance of section 47–712, may within ninety days after notice of said reassessment, appeal from

said reassessment in the same manner and to the same extent as provided in sections 47–2403, 47–2404.

Any person aggrieved by a reassessment or redistribution made pursuant to section 47–716, may within ninety days after notice of such reassessment or redistribution, appeal from such reassessment or redistribution in the same manner and to the same extent as provided in sections 47–2403, 47–2404. (Aug. 17, 1937, ch. 690, title IX, § 5, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8, and amended July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5 (b); July 10, 1952, 66 Stat. 544, ch. 649, § 3 (c).)

CODIFICATION

The five paragraphs of this section comprise, respectively, the last sentences of subsecs. (a), (b), (c), (d), and (e) of section 5 of the act Aug. 17, 1939, title IX. Such section 5 is classified in its entirety as follows: subsection (a) to sections 47–708 and 47–709; subsection (b) to section 47–710; subsection (c) to section 47–711; subsection (d) to section 47–712, and subsection (e) to section 47–716.

AMENDMENTS

1952—Act July 10, 1952, amended the provisos in the first, second and third paragraphs by inserting provisions in the first paragraph dispensing with the complaint where no notice of an increase of valuation is given to the taxpayer prior to March 1, substituting "if the taxpayer shall be notified in writing not later than September 1 of a particular year of the valuation of the real estate valued in accordance with section 47–710, such taxpayer shall first make a complaint" for "such person shall have first made his complaint" in the second paragraph, and "if the taxpayer shall be notified in writing not later than March 1 of a particular year of the valuation of the real estate valued in accordance with section 47–711, such taxpayer shall first make a complaint" for "such person shall have first made his complaint" in the third paragraph.

1939—Act July 26, 1939, amended the first, second and third paragraphs by substituting "October 1" for "August 1" in the first paragraph, "October 15" for "August 1" in the second paragraph, and "April 15" for "February 1" in the third paragraph, and by adding the proviso to each of such paragraphs requiring the person to have first made his complaint to the Board of Equalization and Review.

TRANSFER OF FUNCTIONS

Composition and functions of Board of Equalization and Review, see note under § 47–604.

NOTES TO DECISIONS

Authority to reduce

The Board of Tax Appeals for the District of Columbia has authority to reduce an assessment of real property made by Board of Assistant Assessors and approved by Board of Equalization and Review, notwithstanding the absence of a showing that the assessment is capricious or arbitrary or so at variance with true value as to be actually or constructively fraudulent. *Watrous* v. *District of Columbia* (1943, 135 F. 2d 654, 77 U. S. App. D. C. 295).

Where each lot was assessed at $4,008 and Board of Tax Appeals found value in money of each lot to be $3,500, the Board had power to reduce the assessment, notwithstanding absence of showing that assessment was capricious or arbitrary, under § 47–2403 providing that the Board may affirm, cancel, reduce or increase assessment. *Id.*

§ 47–2406. Appeal from imposition of tax involuntarily paid—Suit.

Any taxpayer who shall have paid within three years immediately preceding August 17, 1937, any tax to the District involuntarily, and under circumstances which according to law would entitle such taxpayer to the right to sue at law for the recovery of such tax, may within ninety days from May 16, 1938, appeal from the imposition of such tax in the same manner and to the same extent as set forth in sections 47–2403, 47–2404. (Aug. 17, 1937, ch. 690, title IX, § 6, as added May 16, 1938, 52 Stat. 374, ch. 223, § 8.)

NOTES TO DECISIONS

Dismissal of appeal

Dismissal of appeal by Board of Tax Appeals where the tax was voluntarily paid. *General Elec. Co.* v. *District of Columbia* (1940, 110 F. 2d 261, 71 App. D. C. 321).

Payment to avoid revocation of license

A corporation licensed to do business in the district which is assessed a tax on its earnings and fails to pay the sum until it receives from the assessor a rule to show cause why their license should not be revoked, and then pays the tax and penalty under protest to avoid revocation of their license, pays the tax involuntarily, entitling it to sue for the recovery of the tax under this act. *Panitz* v. *District of Columbia* (1940, 112 F. 2d 39, 72 App. D. C. 131).

A claim for refund of taxes filed on the ninety-first day was on time, where the ninetieth day fell on Sunday. *Sherwood Bros., Inc.* v. *District of Columbia* (1940, 113 F. 2d 162, 72 App. D.C. 155).

Voluntary payment

In District of Columbia, a tax payment voluntarily made cannot be recovered. *District of Columbia* v. *J. C. Brady* (1960, 288 F. 2d 108, 109 U.S. App. D.C. 324).

§ 47–2407. Refund of erroneous collections.

Any sum finally determined by the board to have been erroneously paid by or collected from the taxpayer shall be refunded by the District to the taxpayer from its annual appropriation for refunding erroneously paid taxes in said District. (Aug. 17, 1937, ch. 690, title IX, § 7, as added May 16, 1938, 52 Stat. 374, ch. 223, § 8.)

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court and the member thereof to be known as the judge of the District of Columbia Tax Court, see § 47–2402.

§ 47–2408. Rules of procedure.

The board shall adopt and promulgate rules of procedure in matters for determination by the board under the provisions of this chapter. (Aug. 17, 1937, ch. 690, title IX, § 8, as added May 16, 1938, 52 Stat. 374, ch. 223, § 8.)

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court and the member thereof to be known as the judge of the District of Columbia Tax Court, see § 47–2402.

§ 47–2409. Summons—Authority to take testimony.

The board is hereby authorized and empowered to summon any person before it to give testimony on oath or affirmation or to produce all books, records, papers, documents, or other legal evidence as to any matter relating to this chapter; and the board is authorized to administer oaths and to take testimony for the purposes of the administration of this chapter. Such summons may be served by any member of the Metropolitan police department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then and in that event the board may report that fact to the United States District Court for the District of Columbia or one of the judges thereof, and said court or any judge thereof hereby is empowered to compel obedience to said summons to the same ex-

tent as witnesses may be compelled to obey the subpenas of that court. (Aug. 17, 1937, ch. 690, title IX, § 9, as added May 16, 1938, 52 Stat. 375, ch. 223, § 8, and amended June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court and the member thereof to be known as the judge of the District of Columbia Tax Court, see § 47–2402.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia", and "judge" and "judges" for "justice" and "justices", respectively.

§ 47–2410. Certain suits forbidden.

No suit shall be filed to enjoin the assessment or collection by the District of Columbia or any of its officers, agents, or employees of any tax. (Aug. 17, 1937, ch. 690, title IX, § 10, as added May 16, 1938, 52 Stat. 375, ch. 223, § 8.)

NOTES TO DECISIONS

Adequate remedy at law

Where taxpayer had an adequate remedy at law by payment of the gross receipts tax, claim for refund, and either appeal to the District of Columbia Tax Court or civil action therein, suit for injunction against collection of the tax would not lie. *D. C. Transit System Inc.* v. *Pearson, Collector of Taxes etc., et al.* (1958, 250 F. 2d 765, 102 U. S. App. D. C. 102).

Fact that owner of household furniture and personal effects, and that holder of lien on such personalty, considered costs incurred in proceedings for collection for personal property taxes against personalty to be excessive, did not provide basis to enjoin Collector of Taxes from having personalty sold for personal property taxes, at least where there was no showing that there were no appropriate remedies at law. *Pearson* v. *Laughlin* (1951, 190 F. 2d 658, 89 U. S. App. D. C. 130).

Where plaintiff in action to enjoin sale of furniture and personal effects for property taxes had only a lien on property, so that plaintiff's claims furnished no basis for saying distraint was illegal, and Collector of Taxes had given assurances that sale would be subject to outstanding liens, sale would not be enjoined. *Id.*

Offer of payment

Where holder of liens on household furniture and personal effects offered to give Collector of Taxes an uncertified check for taxes assessed against personalty, but there was no offer to pay interest or expenses, and offer was made on non-business day, over telephone, while trucks and men were at hand to move personalty to auction rooms, and during preceding business week lien holder had asserted existence of his outstanding liens on personalty, and had subsequently asserted absolute ownership in himself, and at no time during such week had lien holder tendered payment of taxes, Collector was justified in refusing to stay orderly course of collection proceedings, and refusal to Collector to accept offer did not preclude sale of personalty for taxes. *Pearson* v. *Laughlin* (1951, 190 F. 2d 658, 89 U. S. App. D. C. 130).

Maintenance of suit

Statutory ban against injunction to restrain collection of taxes is more honored in the breach than in the observance, and upon a showing of considerations that appeal to discretion of court of equity, suit for injunction may be entertained and determination of validity of tax made in such summary and expeditious manner. *D. C. Transit System, Inc.* v. *Pearson et al.* (D.C.D.C. 1957, 149 F. Supp. 18).

Where District of Columbia was seeking to collect gross receipts tax from successor of recipient, action to enjoin distraint of successor's property to enforce payment could be maintained. *Id.*

§ 47–2411. Manner of serving notices.

Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended, addressed to such person at the address given in any return filed by him, or, if no return has been filed, then to his last-known address. The proof of mailing of any notice mentioned in this chapter shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which must be determined under the provisions of this chapter by the giving of notice shall commence to run from the date of mailing of such notice. (Aug. 17, 1937, ch. 690, title IX, § 11, as added May 16, 1938, 52 Stat. 375, ch. 223, § 8.)

§ 47–2412. Reference by Commissioners to the Board.

In any matter affecting taxation, the determination of which is by law left to the discretion of the commissioners, the commissioners may, if they so elect, refer such matter to the board to make findings of fact and submit recommendations, such findings of fact and recommendations, if any, to be advisory only and not binding on the commissioners, and shall be without prejudice to the commissioners to make such further and other inquiry and investigation concerning such matter as they in their discretion shall consider necessary or advisable. (Aug. 17, 1937, ch. 690, title IX, § 13, as added July 26, 1939, 53 Stat. 1110, ch. 367, title IV, § 5 (c).)

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court and the member thereof to be known as the judge of the District of Columbia Tax Court, see § 47–2402.

§ 47–2413. Overpayments—Board of Tax Appeals.

(a) Where there has been an overpayment of any tax, the amount of such overpayment shall be refunded to the taxpayer. No such refund of taxes other than inheritance and estate taxes shall be allowed after after two years from the date the tax is paid unless before the expiration of such period a claim therefor is filed by the taxpayer. The amount of refund of taxes other than inheritance and estate taxes shall not exceed the portion of the tax paid during the two years immediately preceeding the filing of the claim, or if no claim is filed, then during the two years immediately preceding the allowance of the refund. No such refund of inheritance and estate taxes shall be allowed after three years from the date the tax is paid unless before the expiration of such period a claim therefor is filed by the taxpayer. The amount of refund of any such inheritance and estate taxes shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim is filed, then during the three years immediately preceding the allowance of the refund. Every claim for refund must be in writing under oath, must state the specific grounds upon which the claim is founded and must be filed with the Assessor. If the Assessor disallows all or any part of the claim for refund, he shall send to the taxpayer by registered or certified mail a notice of such disallowance. Within ninety days after the mailing of the notice of disallowance, if the claim

is acted upon within six months after the filing thereof, or within ninety days after the termination of such six months' period, if the claim is not acted upon within such period, the taxpayer may appeal to the Board, in the same manner and to the same extent as set forth in sections 47–2403 and 47–2404: *Provided,* That this subsection shall not apply to the taxes imposed by sections 47–1501 to 47–1548; by sections 47–1551 to 47–1595; or by sections 47–2601 to 47–2629 and 47–2701 to 47–2713, refunds of which are otherwise provided for by law; and that it shall not apply to the real estate tax.

(b) In any proceeding under this chapter, the Board of Tax Appeals for the District of Columbia shall have jurisdiction to determine whether there has been any overpayment of tax and to order that such overpayment be credited or refunded to the taxpayer: *Provided,* That a timely refund claim has been filed. Where a notice of assessment is mailed to the taxpayer on or before the last day on which a timely claim for refund could be filed, an appeal filed within ninety days after the mailing of such notice asserting an overpayment shall, for the purposes of this subsection, be deemed to be a timely claim for refund.

(c) The remedies provided to the taxpayer under this chapter shall not be deemed to take away from the taxpayer any remedy which he might have under any other provision of law, but no suit for the recovery of an overpayment of any tax shall be instituted in any court if the taxpayer has elected to file an appeal with respect to such overpayment with the Board of Tax Appeals for the District of Columbia under this chapter.

(d) Any other provision of law to the contrary notwithstanding, if it shall be determined by the Assessor, the Board of Tax Appeals for the District of Columbia, or any court having jurisdiction over the subject matter that there has been an overpayment of any tax, whether as a deficiency or otherwise, interest shall be allowed and paid upon such overpayment of tax at the rate of 4 per centum per annum from the date such overpayment was paid until the date of refund: *Provided,* That with respect to that part of any overpayment which was not assessed and paid as a deficiency or as additional tax such interest shall be allowed and paid only from the date of filing a claim for refund, a petition to the Board, or a complaint with a court of competent jurisdiction, as the case may be.

(e) For the purposes of this section, any interest or penalties paid by the taxpayer in connection with an overpayment of tax shall be deemed to be a part of such overpayment of tax. (Aug. 17, 1937, ch. 690, title IX, § 14, as added July 10, 1952, 66 Stat. 546, ch. 649, § 4, and amended June 11, 1960, 74 Stat. 204, Pub. L. 86–507, § 1(56); June 27, 1960, 74 Stat. 224, Pub. L. 86–528, § 1.)

AMENDMENT

1960—Subsec. (a) amended by act June 27, 1960, to increase the period for refund of estate and inheritance taxes from two years to three years from the date the tax is paid.

Subsec. (a) amended by act June 11, 1960, which inserted words "or by certified mail" following "registered mail."

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court and the member thereof to be known as the judge of the District of Columbia Tax Court, see § 47–2402.

CROSS REFERENCE

Certified mail receipts as prima facie evidence of delivery, see § 14–506.

NOTES TO DECISIONS

Limitations

Where claim for refund of a District of Columbia estate tax was not filed within two years of payment of the tax, Tax Court had no jurisdiction to decide anything, and if it had jurisdiction it had no authority to do otherwise than deny petitioner's claim in view of this section providing no refund of an overpayment shall be allowed after two years from date the tax is paid unless before the expiration of such period, claim therefor is filed by the taxpayer. *American Security and Trust Co. etc.* v. *District of Columbia* (1956, 235 F. 2d 19, 98 U. S. App. D. C. 260).

§ 47–2414. Reestablishment of Board.

Notwithstanding the provisions of the Reorganization Act of 1949 and notwithstanding the provisions of Reorganization Plan Numbered 5 of 1952, relating to the District of Columbia, the Board of Tax Appeals for the District of Columbia shall not be abolished, and, if prior to July 10, 1952, it has been abolished, it is hereby reestablished. In either event, the functions of the said Board of Tax Appeals transferred to the Board of Commissioners of the District of Columbia by said Reorganization Plan Numbered 5 of 1952 are hereby retransferred to said Board of Tax Appeals or to said Board of Tax Appeals as hereby reestablished, to be exercised in the same manner, to the same extent, and under the same provisions of law as if said Reorganization Plan Numbered 5 had never gone into effect, except only as such provisions of law may be modified by this Act.

All petitions, answers, or other pleadings, documents, or papers filed with, and all actions taken by, and all decisions rendered by, the person, persons, office, or agency to which said Board of Commissioners may have redelegated the functions of said Board of Tax Appeals, between the effective date of said Reorganization Plan Numbered 5 and July 10, 1952, shall have the same force and effect for all purposes as if filed with, taken by, or rendered by, said Board of Tax Appeals or said Board of Tax Appeals as hereby reestablished.

If, prior to July 10, 1952, the said Board of Tax Appeals shall have been abolished, the said Board of Commissioners shall appoint an individual to act as the member of the said Board of Tax Appeals as hereby reestablished, said appointment to be made in accordance with the provisions of section 47–2402. (July 10, 1952, 66 Stat. 547, ch. 649, § 7.)

REFERENCES IN TEXT

The Reorganization Act of 1949 (June 20, 1949, 63 Stat. 203, ch. 226, as amended), referred to in this section, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by 5 U.S.C. § 901 et seq. For effect on references, in other laws (such as in this section), to laws replaced by provisions in title 5, U.S.C., see § 7(b) of such act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251.

Reorganization Plan Numbered 5 of 1952, referred to in the text, is set out in the Appendix to Title 1, Administration.

This Act, referred to in the text, means act July 10, 1952, which is classified to this section and sections 47–304, 47–708, 47–709, 47–710, 47–711, 47–1408, 47–1538, 47–1540, 47–1541, 47–1619, 47–2402, 47–2403, 47–2404, 47–2405, 47–2413 and 47–2624.

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court and the member thereof to be known as the judge of the District of Columbia Tax Court, see § 47–2402.

Chapter 25.—MISCELLANEOUS PROVISIONS

Sec.
47–2501. Authorization for advance of funds by Secretary of Treasury.
47–2501a. Annual payment by the United States—Appropriations.
47–2501b. Annual payment by the United States—Deficiency appropriations.
47–2502. Regulations.
47–2503. Separability of provisions.
47–2504. Divulging of information obtained from Bureau of Internal Revenue unlawful—Penalties.

§ 47–2501. Authorization for advance of funds by Secretary of Treasury.

The Secretary of the Treasury, notwithstanding the provisions of the District of Columbia Appropriation Act, approved June 29, 1922, is authorized and directed to advance, on the requisition of the commissioners of the District of Columbia, made in the manner now prescribed by law, out of any money in the treasury of the United States not otherwise appropriated, such sums as may be necessary, from time to time, to meet the general expenses of said District, as authorized by Congress, and such amounts so advanced shall be reimbursed by the said commissioners to the treasury out of taxes and revenue collected for the support of the government of the said District of Columbia. (Aug. 17, 1937, 50 Stat. 692, ch. 690, title VII, § 2; May 16, 1938, 52 Stat. 369, ch. 223, § 7; July 26, 1939, 53 Stat. 1118, ch. 367, title VI; Mar. 2, 1940, 54 Stat. 39, ch. 37, § 3; June 27, 1942, 56 Stat. 460, ch. 452, § 11; June 28, 1944, 58 Stat. 533, ch. 300, § 14.)

AMENDMENTS

1944—Act June 28, 1944, struck out the words "until and including June 30, 1944," from the beginning of the first sentence.

1939—Act July 26, 1939, deleted the words "during said fiscal year" following the words "from time to time."

1938—Act May 16, 1938, deleted the word "the" from the phrase "of the taxes" in the last clause.

§ 47–2501a. Annual payment by the United States—Appropriations.

For the fiscal year ending June 30, 1967, and for each fiscal year thereafter, there is authorized to be appropriated, as the annual payment by the United States toward defraying the expenses of the government of the District of Columbia, the sum of $60,000,000 which shall be credited to the general fund of the District of Columbia. (July 16, 1947, 61 Stat. 361, ch. 258, Art. VI, § 1; May 18, 1954, 68 Stat. 113, ch. 218, title VII, § 701; Sept. 30, 1966, 80 Stat. 857, Pub. L. 89–610, title V, § 501.)

AMENDMENTS

1966—Act Sept. 30, 1966, combined with this section those provisions of § 47–2501b which related to appropriations in addition to those originally authorized by this section, and which, in addition, provided for the payments so authorized to be credited to the general fund; and increased the authorization for the annual Federal payment from $50,000,000 to $60,000,000. See amendment notes under § 47–2501b.

As originally enacted, this section authorized appropriations for fiscal year ending June 30, 1948, and for each fiscal year thereafter, as the annual payment by United States toward defraying expenses of government of the District, the sum of $12,000,000, of which $11,000,000 should be credited to the general fund of the District, and $1,000,000 should be credited to the water fund of the District, established by chapter 15 of title 43.

1954—Act May 18, 1954, designated the provisions of this section, which had been enacted by the 1947 act as "Article VI" of such act, as § 1 of such article.

PRIOR LAW

Prior to act July 16, 1947, cited to the text of this section, act July 26, 1939, 53 Stat. 1085, ch. 367, title I, which was classified to former § 47–134, authorized appropriations for fiscal year June 30, 1940 and each fiscal year thereafter, as the annual payment by the United States toward defraying expenses of government of the District, the sum of $6,000,000. Such provisions were superseded by this section and § 47–2501b, and were repealed by § 502 (80 Stat. 857) of act Sept. 30, 1966, Pub. L. 89–610, title V, cited to the text of this section.

CONSTRUCTION; SEVERABILITY OF PROVISIONS; RULES AND REGULATIONS

For construction of act Sept. 30, 1966, Pub. L. 89–610, amending this section, severability of provisions with respect thereto, and authority to make rules and regulations to carry out provisions thereof, see §§ 1003–1005 of such act, set out as a note under § 25–124.

§ 47–2501b. Annual payment by the United States—Deficiency appropriations.

If in any fiscal year or years a deficiency exists between the amount appropriated and the amount authorized by this article to be appropriated, additional appropriations are hereby authorized for subsequent fiscal years to pay such deficiency or deficiencies. (July 16, 1947, ch. 258, Art. VI, § 2, as added May 18, 1954, 68 Stat. 113, ch. 218, title VII, § 701, and amended Mar. 31, 1956, 70 Stat. 83, ch. 154, § 401; June 6, 1958, 72 Stat. 183, Pub. L. 85–451, § 2; Aug. 27, 1963, 77 Stat. 130, Pub. L. 88–104, § 1; Sept. 30, 1966, 80 Stat. 857, Pub. L. 89–610, title V, § 501.)

1966—Act Sept. 30, 1966, eliminated subsec. (a) (which authorized appropriations in addition to those authorized by § 47–2501a) and subsec. (c) (which provided that the payments authorized should be credited to the general fund of the District), such provisions now being covered by § 47–2501a as amended by the same act (see, also, 1956, 1958 and 1963 amendments note below); and, in reenacting the remaining provisions, eliminated the designation of subsec. "(b)" with respect thereto.

1956, 1958 and 1963—In former subsec. (a) which, commencing with fiscal year 1955, authorized appropriations in addition to those authorized by § 47–2501a, these acts increased the additional authorizations commencing with fiscal years 1957, 1959 and 1964, respectively, from $9,000,000 commencing with fiscal year 1955, to $39,000,000 commencing with fiscal year 1964; and based on the increased authorizations in each case, continued the provisions of a former proviso by which certain amounts of the aggregate annual payments by the United States appropriated under this section and § 47–2501a to the credit of the general fund for specified fiscal years should be available for capital outlay only, and then on a cumulative basis only to the extent of not more than 50 per centum of the cumulative total of capital outlay appropriations payable from such general fund which became available for expenditure on and after July 1, 1954. See 1966 amendment note above.

In addition, the 1956 act (March 31, 1956) amended former subsec. (b) (now entire section) by substituting

"amount authorized by this article to be appropriated" for "amount of $20,000,000 authorized by this article to be appropriated". See 1966 amendment note above.

CONSTRUCTION; SEVERABILITY OF PROVISIONS; RULES AND REGULATIONS

For construction of act Sept. 30, 1966, Pub. L. 89–610, amending this section, severability of provisions with respect thereto, and authority to make rules and regulations to carry out provisions thereof, see §§ 1003–1005 of such act, set out as a note under § 25–124.

§ 47–2502. Regulations.

The Commissioners of the District of Columbia are authorized to make such rules and regulations as may be necessary to carry out the provisions of the District of Columbia Revenue Act of 1937, as amended and shall prescribe and publish all needful rules and regulations for the enforcement of the Revenue Act of 1939. (Aug. 17, 1937, 50 Stat. 693, ch. 690, title VII, § 3, formerly § 4, renumbered and amended May 16, 1938, 52 Stat. 370, ch. 223, § 7; July 26, 1939, 53 Stat. 1119, ch. 367, title VIII, § 2.)

COMPILER'S NOTE

The District of Columbia Revenue Act of 1937, referred to in the text, is classified to §§ 40–101 to 40–105, 47–1401 to 47–1412, 47–1601 to 47–1629, 47–1801 to 47–1808, 47–1901 to 47–1903, 47–1905, 47–1907, 47–1908, 47–1911, 47–2501 to 47–2504.

The Revenue Act of 1939, referred to in the text, is classified to §§ 11–332, 47–134, 47–1204, 47–1211, 47–1501 to 47–1543, 47–1601 to 47–1629, 47–1701, 47–2402, 47–2403, 47–2405, 47–2412, and 47–2501 to 47–2503.

AMENDMENT

1939—Act July 26, 1939, added the last clause pertaining to the Revenue Act of 1939.

§ 47–2503. Separability of provisions.

If any provision of the District of Columbia Revenue Act of 1937 and the Revenue Act of 1939 or the application thereof to any person or circumstance, is held invalid, the remainder of the act, and the application of such provisions to other persons or circumstances, shall not be affected thereby. (Aug. 17, 1937, 50 Stat. 693, ch. 690, title VII, § 4, formerly § 5, renumbered and amended May 16, 1938, 52 Stat. 370, ch. 223, § 7; July 26, 1939, 53 Stat. 1119, ch. 367, title VIII, § 1.)

REFERENCES IN TEXT

For classification of the Revenue Acts of 1937 and 1939 in this Code, see note under § 47–2502.

AMENDMENT

1939—Act July 26, 1939, inserted the words "and the Revenue Act of 1939." by authority of the 1939 amendment.

§ 47–2504. Divulging of information obtained from Bureau of Internal Revenue unlawful—Penalties.

Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioners or any person having an administrative duty under this chapter to divulge or make known in any manner any information obtained from the Bureau of Internal Revenue in accordance with any provisions of the District of Columbia Revenue Act of 1937, as amended. Any violation of the provisions of this section shall subject the offender to a fine of $300 or imprisonment for ninety days. (Aug. 17, 1937, ch. 690, title VII, § 5, as added May 16, 1938, 52 Stat. 370, ch. 223, § 7.)

REFERENCES IN TEXT

For the provisions of the Revenue Act of 1937, see note under § 47–2502.

CHANGE OF NAME

The official title of the Bureau of Internal Revenue was changed to the Internal Revenue Service by Treas. Dept. Order 150–29, eff. July 9, 1953.

Chapter 26.—GROSS SALES TAX

Sec.

47–2601. Definitions.
47–2602. Imposition of tax.
47–2603. Reimbursement of vendor for tax.
47–2604. Rate of tax.
47–2605. Exemptions.
47–2606. Tax to be separately stated.
47–2607. Presumption of taxability.
47–2608. Tax a personal debt—Period of limitation.
47–2609. Tax a preferred claim—Priority over property taxes.
47–2610. Collection of tax—Liens—Jeopardy assessments—Distraint.
47–2611. Assumption or refund of tax by vendor unlawful—Penalties.
47–2612. Monthly returns to be filed.
47–2613. Payment of tax.
47–2614. Annual returns to be filed.
47–2615. Secrecy of returns—Reciprocity.
47–2616. Determination of deficiencies.
47–2617. Refunds.
47–2618. Appeals.
47–2619. Sales in bulk.
47–2620. Rules and regulations.
47–2621. Additional powers of Assessor.
47–2622. Examination of records and witnesses.
47–2623. Certificate of registration.
47–2624. Penalties and interest.
47–2625. Failure to file return.
47–2626. Assessment of deficiencies—Limitations thereupon.
47–2627. Prosecutions.
47–2628. Notices—How given.
47–2629. Extensions of time.

§ 47–2601. Definitions.

1. "Assessor" means the Assessor of the District or his duly authorized representatives.

2. "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.

3. "Collector" means the Collector of Taxes of the District or his duly authorized representatives.

4. "Commissioners" means the Commissioners of the District or their duly authorized representatives.

5. "District" means the District of Columbia.

6. "Engaging in business" means commencing, conducting, or continuing in business, as well as liquidating a business when the liquidator thereof holds himself out to the public as conducting such a business.

7. "Food" means cereals and cereal products; milk and milk products, including ice cream; meat and meat products; fish and fish products; eggs and egg products; vegetables and vegetable products; fruit, fruit products, and fruit juices; soft drinks; spices and salt; flavoring extracts and condiments; sugar and sugar products; coffee and coffee substitutes; tea; cocoa and cocoa products; and ice: *Provided, however,* That the word "food" shall not include spiritous or malt liquors and beer.

8. "Gross receipts" means the total amount of the sales prices of the retail sales of vendors, valued in money, whether received in money or otherwise.

9. "Person" includes an individual, partnership, society, club, association, joint-stock company, corporation, estate, receiver, trustee, assignee, or referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals acting as a unit.

10. "Purchaser" includes a person who purchases property or to whom are rendered services, receipts from which are taxable under this chapter.

11. "Purchaser's certificate" means a certificate signed by a purchaser and in such form as the Assessor shall prescribe, stating the purpose to which the purchaser intends to put the subject of the sale, or the status or character of the purchaser.

12. "Retailer" includes—

(a) every person engaged in the business of making sales at retail;

(b) every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others;

(c) every person engaged in the business of making sales for storage, use, or other consumption, or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.

13. "Retail establishment" means any premises in which the business of selling tangible personal property is conducted or in or from which any retail sales are made.

14. (a) "Retail sale" and "sale at retail" mean the sale in any quantity or quantities of any tangible personal property or service taxable under the terms of this chapter. Said term shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include but shall not be limited to the following:

(1) The sale of any meals, food or drink or other like tangible personal property for a consideration.

(2) Any production, fabrication, or printing of tangible personal property on special order for a consideration.

(3) The sale or charges for any room or rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration.

(4) The sale of natural or artificial gas, oil, electricity, solid fuel, or steam, when made to any purchaser for purposes other than resale or for use in manufacturing, assembling, processing, or refining.

(5) The sale of material used in the construction, and of materials used in the repair or alteration, of real property, which materials, upon completion of such construction, alterations, or repairs, become real property, regardless of whether or not such real property is to be sold or resold.

(6) The sale or charges for possession or use of any article of tangible personal property granted under a lease or contract, regardless of the length of time of such lease or contract or whether such lease or contract is oral or written; in such event, for the purposes of this chapter, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rental paid: *Provided, however,* That the gross proceeds from the rental of films, records or any type of sound transcribing to theaters and radio and television broadcasting stations shall not be considered a retail sale: *Provided further,* That the gross proceeds from the rental of textiles, the essential part of which rental includes recurring service of laundering or cleaning thereof, shall not be considered a retail sale.

(b) The term "retail sale" and "sale at retail" shall not include the following:

(1) Sales of tickets for admission to places of amusement and sports.

(2) Sales of transportation and communication services.

(3) Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made.

(4) Any sale in which the only transaction in the District is the mere execution of the contract of sale and in which the tangible personal property sold is not in the District at the time of such execution: *Provided, however,* That nothing contained in this subsection shall be construed to be an exemption from the tax imposed under chapter 27 of this title.

(5) Sales to a common carrier or sleeping-car company by a corporation all of whose capital stock is owned by one or more common carriers or sleeping-car companies of tangible personal property, procured or acquired by such corporation outside the District, which consists of repair or replacement parts used for the maintenance or repair of any train operating principally without the District in the course of interstate commerce, or commerce between the District and a State, provided such sales are made in connection with the furnishing of terminal services pursuant to a written agreement entered into before January 1, 1963.

15. "Return" includes any return filed or required to be filed as herein provided.

16. (a) "Sales price" means the total amount paid by a purchaser to a vendor as consideration for a retail sale, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold.

(2) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.

(3) The cost of transportation of the property prior to its sale at retail. The total amount of the sales price includes all of the following: a. Any services that are a part of the sale. b. Any amount for which credit is given to the purchaser by the vendor.

(4) Amounts charged for any cover, minimum, entertainment, or other service in hotels, restaurants, cafes, bars, and other establishments where meals, food, or drink, or other like tangible personal property is furnished for a consideration.

(b) The term "sales price" does not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) The amount charged for property returned by purchasers to vendors upon rescission of contracts of sale when the entire amounts charged therefor are refunded either in cash or credit, and when the property is returned within ninety days from the date of sale.

(3) The amount charged for labor or services rendered in installing or applying the property sold.

(4) The amount of reimbursement of tax paid by the purchaser to the vendor under this chapter.

(5) Transportation charges separately stated, if the transportation occurs after the sale of the property is made.

17. "Sale" and "selling" mean any transaction whereby title or possession, or both, of tangible personal property is or is to be transferred by any means whatsoever, including rental, lease, license, or right to reproduce or use, for a consideration, by a vendor to a purchaser, or any transaction whereby services subject to tax under this chapter are rendered for consideration or are sold to any purchaser by any vendor, and shall include, but not be limited to, any "sale at retail" as defined in this chapter. Such consideration may be either in the form of a price in money, rights, or property, or by exchange or barter, and may be payable immediately, in the future, or by installments.

18. "Semipublic institution" means any corporation, and any community chest, fund, or foundation, organized exclusively for religious, scientific, charitable, or educational purposes, including hospitals, no part of the net earnings of which inures to the benefit of any private shareholder or individual. For the purpose of this chapter an organization or institution which does not embrace the generally recognized relationship of teacher and student shall be deemed not to be operated for educational purposes.

19. "Tangible personal property" means corporeal personal property of any nature.

20. "Tax" means the tax imposed by this chapter.

21. "Taxpayer" means any person required by this chapter to make returns or to pay the tax imposed by this chapter.

22. "Tax year" means the calendar year, or the taxpayer's fiscal year if it be other than the calendar year when such fiscal year is regularly used by the taxpayer for the purpose of reporting District income taxes as the tax period in lieu of the calendar year.

23. "Vendor" includes a person or retailer selling property or rendering services upon the receipts from which a tax is imposed under this chapter.

24. The foregoing definitions shall be applicable whenever the words defined are used in this chapter unless otherwise required by the context. (May 27, 1949, 63 Stat. 112, ch. 146, title I, §§ 101—124; May 18, 1954, 68 Stat. 117, ch. 218, title XIII, §§ 1301, 1302; Mar. 31, 1956, 70 Stat. 80, ch. 154, title II, §§ 201–203; Sept. 2, 1964, 78 Stat. 847, Pub. L. 88–564, § 1.)

AMENDMENTS

1964—Act Sept. 2, 1964, amended subsection 14(b), by adding paragraph (5) thereto.

1956—Par. 14(a)(6) amended generally by act Mar. 31, 1956, § 201. Prior to such amendment, such paragraph read as follows: "The grant of the right to continuous possession or use of any article of tangible personal property granted under a lease or contract if such grant of possession would be taxable if outright sale were made; in such event such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rentals paid."

Par. 16(a)(4) added by act Mar. 31, 1956, § 202.

Par. 17 amended by act Mar. 31, 1956, § 203, which included rental, lease, license, or right to reproduce or use.

1954—Par. 7 amended by act May 18, 1954, § 1301, which deleted the word "bottled" preceding "soft drinks" and the words "when used for household consumption" following "ice", and eliminated beverages such as are ordinarily dispensed at bars and soda fountains or in connection therewith from the proviso.

Par. 14(a)(1) amended by act May 18, 1954, § 1302, which substituted "The sale of any meals, food or drink or other like tangible personal property for a consideration" for "The sale for consumption of any meals, food or drink, or other tangible personal property for a consideration, at any restaurant, hotel, drug store, club, resort, or other place at which meals, food, drink, or other tangible personal property are sold."

EFFECTIVE DATE OF 1956 AMENDMENT

Section 206 of act Mar. 31, 1956, provided that: "The provisions of this title [amending this section and sections 47–2605 and 47–2701] shall take effect on the first day of the first month which begins on or after the sixtieth day after the date of enactment of this Act [Mar. 31, 1956]."

EFFECTIVE DATE OF 1954 AMENDMENT

Section 1309 of act May 18, 1954, provided that: "The provisions of this title [amending this section and sections 47–2602, 47–2604, 47–2605, 47–2701, 47–2702 and 47–2705] shall become effective on and after the first day of the first month succeeding the sixtieth day after the approval of this Act [May 18, 1954]."

SHORT TITLE

Section 1 of act May 27, 1949, provided in part that: "Title I of this Act [which enacted this chapter] may be cited as the 'District of Columbia Sales Tax Act.' "

NOTES TO DECISIONS

Television motion pictures

Television motion pictures produced for price of $700,000 under contract between producer and union became union property without qualification, and transactions were, for purposes of District of Columbia sales tax, taxable sales transactions, not nontaxable personal service transactions. *District of Columbia* v. *Norwood Studios, Inc.* (1964, 336 F. 2d 746, 118 U.S. App. D.C. 358).

§ 47–2602. Imposition of tax.

Beginning on and after August 1, 1949, for the privilege of selling certain tangible personal property at retail sale and for the privilege of selling certain selected services defined as sales at retail in this chapter, a tax is hereby imposed upon all vendors at the rate of 3 per centum of the gross receipts of any vendor from the sale of such tangible personal property and services: *Provided,* That the rate of tax with respect to sales of food for human consumption off the premises where such food is sold shall be 1 per centum of the gross receipts from such sales, and that the rate of tax with respect to sales or charges for any room or rooms, lodgings, or accommodations, furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients shall be 5 per

centum of the gross receipts from such sales. (May 27, 1949, 63 Stat. 115, ch. 146, title I, § 125; May 18, 1954, 68 Stat. 117, ch. 218, title XIII, § 1303; Mar. 2, 1962, 76 Stat. 10, Pub. L. 87–408, § 101(a); Sept. 30, 1966, 80 Stat. 856, Pub. L. 89–610, title III, § 301(a).)

AMENDMENTS

1966—Act Sept. 30, 1966, amended the section by striking out "4 per centum" in the proviso and inserting in lieu "5 per centum".

1962—Act Mar. 2, 1962, 76 Stat. 10, Pub. L. 87–408, § 101(a), amended the section by striking out "2 per centum" and inserting in lieu "3 per centum" and by striking out "3 per centum" in the proviso and inserting in lieu "4 per centum".

1954—Act May 18, 1954, added the proviso clause.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 303 of act Sept. 30, 1966, 80 Stat. 856, Pub. L. 89–610, title III, provided: "The amendments made by this title [by §§ 301 and 302 of the act, amending this section and § 47–2604(c), and repealing § 47–2605(q)] shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act [Sept. 30, 1966]."

EFFECTIVE DATE AND REFERENCES TO SECTIONS 47–2602 AND 47–2604

Section 103, act Mar. 2, 1962, provides as follows: "The amendments made by the first two sections of this title [amending sections 47–2602, 47–2604 and 47–2702] shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act [Mar. 2, 1962]. From and after the effective date of such amendments, all references in the District of Columbia Use Tax Act [ch. 27, title 47, D.C. Code] to sections 125 [47–2602] and 127 [47–2604] of the District of Columbia Sales Tax Act shall be deemed to be references to such sections 125 and 127 as amended by the first section of this title."

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act May 18, 1954, effective on and after the first day of the first month succeeding the 60th day after May 18, 1954, see section 1309 of act May 18, 1954, set out as a note under § 47–2601.

CONSTRUCTION; SEVERABILITY OF PROVISIONS; RULES AND REGULATIONS

For construction of act Sept. 30, 1966, Pub. L. 89–610, amending this section, severability of provisions with respect thereto, and authority to make rules and regulations to carry out provisions thereof, see §§ 1003–1005 of such act, set out as a note under § 25–124.

NOTES TO DECISIONS

Constitutionality

The imposition of a new tax or increase in the rate of an old one is one of the usual hazards of business, and it does not ordinarily impair the obligation of a pre-existing contract. *McShain, Inc.* v. *District of Columbia* (1953, 205 F. 2d 882, 92 U. S. App. D. C. 358, certiorari denied 74 S. Ct. 227, 346 U. S. 900, 98 L. Ed. 400).

Prior contract

Where personal property was purchased by contractor subsequent to passage of this chapter, fact that construction contracts with reference to which purchases were made had been entered into before passage of this chapter did not absolve contractor from payment of the use tax, since it is the purchase or use itself, and not the signing of the contracts ultimately necessitating the purchase, which is the taxable event. *McShain, Inc.* v. *District of Columbia* (1953, 205 F. 2d 882, 92 App. D. C. 358, certiorari denied 74 S. Ct. 227, 346 U. S. 900, 98 L. Ed. 400).

§ 47–2603. Reimbursement of vendor for tax.

Reimbursement for the tax imposed upon the vendor shall be collected by the vendor from the purchaser on all sales the gross receipts from which are subject to the tax imposed by this chapter so far as it can be done. It shall be the duty of each purchaser in the District to reimburse the vendor, as provided in section 47–2604, for the tax imposed by this chapter. Such reimbursement of tax shall be a debt from the purchaser to the vendor and shall be recoverable at law in the same manner as other debts. (May 27, 1949, 63 Stat. 115, ch. 146, title I, § 126.)

§ 47–2604. Rate of tax.

For the purpose of collecting his reimbursement as provided in section 47–2603 insofar as it can be done and yet eliminate the fractions of a cent, the vendor shall add to the sales price and collect from the purchaser the following amounts:

(a) On each sale, other than sales of food for human consumption off the premises where such food is sold, and other than sales or charges for rooms, lodgings, or accommodations furnished to transients, such amounts as may be prescribed by the Board of Commissioners of the District of Columbia to carry out the purposes of this section.

(b) On each sale of food for human consumption off the premises where such food is sold where the sales price is from 28 cents to $1.27, both inclusive, 1 cent; on each such sale where the sales price is from $1.28 to $2.27, both inclusive, 2 cents; and on each $1 of sales price or fraction thereof of such sale in excess of $2.27, 1 cent.

(c) On each sale or charge for rooms, lodgings, or accommodations, furnished to transients, 5 per centum of the sales price.

(May 27, 1949, 63 Stat. 115, ch. 146, title I, § 127; May 18, 1954, 68 Stat. 118, ch. 218, title XIII, § 1304; Mar. 2, 1962, 76 Stat. 10, Pub. L. 87–408, § 101(b)(c); Sept. 30, 1966, 80 Stat. 856, Pub. L. 89–610, title III, § 301(b).)

AMENDMENTS

1966—Act Sept. 30, 1966, amended subsec. (c) by striking out "4 per centum" and inserting in lieu "5 per centum".

1962—Act Mar. 2, 1962, amended subsection (a) by striking out the words, "where the sales price is from 14 cents to 63 cents, both inclusive, 1 cent; on each such sale where the sales price is from 64 cents to $1.13, both inclusive, 2 cents; and on each 50 cents of sales price or fraction thereof of such sale in excess of $1.13, 1 cent", and substituting the words, "such amounts as may be prescribed by the Board of Commissions of the District of Columbia to carry out the purposes of this section". Act also amended subsection (c) by striking out "3 per centum" and inserting in lieu "4 per centum".

1954—Act May 18, 1954, consolidated former subsecs. (a), (b), and (c) and redesignated them as subsec. (a), and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act Sept. 30, 1966, as effective on first day of first month which begins on or after thirtieth day after Sept. 30, 1966, see § 303 of such act, set out as a note under § 47–2602.

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 47–2602.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act May 18, 1954, effective on and after the first day of the first month succeeding the 60th day after May 18, 1954, see section 1309 of act May 18, 1954, set out as a note under § 47–2601.

CONSTRUCTION; SEVERABILITY OF PROVISIONS; RULES AND REGULATIONS

For construction of act Sept. 30, 1966, Pub. L. 89–610, amending this section, severability of provisions with

respect thereto, and authority to make rules and regulations to carry out provisions thereof, see §§ 1003–1005 of such act, set out as a note under § 25–124.

§ 47–2605. Exemptions.

Gross receipts from the following sales shall be exempt from the tax imposed by this chapter:

(a) Sales to the United States or the District or any instrumentality thereof except sales to national banks and Federal savings and loan associations.

(b) Sales to a State or any of its political subdivisions if such State grants a similar exemption to the District. As used in this subsection, the term "State" means the several States, Territories, and possessions of the United States.

(c) Sales to a semipublic institution: *Provided, however,* That such sales shall not be exempt unless (1) such institution shall have first obtained a certificate from the Assessor stating that it is entitled to such exemption, and (2) the vendor keeps a record of the sales price of each such separate sale, the name of the purchaser, the date of each such separate sale, and the number of such certificate.

(d) (1) Repealed. May 18, 1954, 68 Stat. 118, ch. 218, title XIII, § 1305.

(2) Repealed. Mar. 31, 1956, 70 Stat. 81, ch. 154, title III, § 304(a).

(e) Sales of motor-vehicle fuels upon the sale of which a tax is imposed by chapter 19 of this title.

(f) Sales of property purchased by a utility or public-service company for use or consumption in furnishing a commodity or service: *Provided,* That the receipts from furnishing such commodity or service are subject to a gross-receipts or mileage tax in force in the District during or for the period of time covered by any return required to be filed by the provisions of this chapter.

(g) Sales of newspapers and publications of semipublic institutions as defined in paragraph 18 of section 47–2601.

(h) Casual and isolated sales by a vendor who is not regularly engaged in the business of making sales at retail.

(i) Sales of livestock, poultry, seeds, feeds for livestock and poultry, fertilizers, lime, and land plaster used for agricultural purposes.

(j) Sales of food or beverages of any nature if made in any car composing a part of any train or in any aircraft or boat operating within the District in the course of commerce between the District and a State.

(k) Sales of goods made pursuant to bona fide contracts entered into before May 27, 1949: *Provided,* That there is a contract in writing signed by the purchaser and vendor which imposes an unconditional liability on the part of the purchaser to buy the goods covered thereby at a fixed price and without escalator clause, and an unconditional liability on the part of the vendor to deliver a definite quantity of such goods at the contract price.

(*l*) Sales of natural or artificial gas, oil, electricity, solid fuel, or steam, directly used in manufacturing, assembling, processing, or refining.

(m) Sales which a State would be without power to tax under the limitations of the Constitution of the United States.

(n) Sale of motor vehicles and trailers which are subject to the provisions of title III of the District of Columbia Revenue Act of 1949.

(*o*) Sales of medicines, pharmaceuticals, and drugs whether or not made on prescriptions of duly licensed physicians and surgeons and general and special practitioners of the healing art.

(p) Sales of crutches, wheel chairs for the use of cripples and invalids, and, when designed to be worn on the person of the purchaser or user, artificial limbs, artificial eyes, and artificial hearing devices; sales of false teeth by a dentist and the materials used by a dentist in dental treatment; sales of eyeglasses, when especially designed or prescribed by an ophthalmologist, oculist, or optometrist for the personal use of the owner or purchaser; and sales of artificial braces and supports designed solely for the use of crippled persons.

(q) Repealed, Sept. 30, 1966, 80 Stat. 856, Pub. L. 89–610, title III, § 302.

(r) Sales of material to be incorporated permanently in any war memorial authorized by Congress to be erected on public grounds of the United States. (May 27, 1949, 63 Stat. 115, ch. 146, title I, § 128; May 18, 1954, 68 Stat. 118, ch. 218, title XIII, § 1305; Mar. 31, 1956, 70 Stat. 81, ch. 154, title II, § 204; July 3, 1957, 71 Stat. 276, Pub. L. 85–82, § 1; Sept. 30, 1966, 80 Stat. 856, Pub. L. 89–610, title III, § 302.)

REFERENCES IN TEXT

Title III of the District of Columbia Revenue Act of 1949, referred to in subsec. (n), is classified to subsec. (j) of section 40–603, to section 40–603–1, and as a note under section 40–603.

AMENDMENTS

1966—Act Sept. 30, 1966, amended section by repealing subsec. (q), which exempted sales of cigarettes from sales tax.

1957—Subsec. (r) added by act July 3, 1957.

1956—Subsec. (d)(2), which exempted sales of food sold for human consumption in hotels, restaurants, cafes, bars, and other establishments where the sales price of the food furnished each individual patron is 50 cents or less, was repealed by act Mar. 31, 1956, § 204(a).

Subsec. (n) amended by act Mar. 31, 1956, § 204(b), which inserted words "which are subject to the provisions of title III of the District of Columbia Revenue Act of 1949."

1954—Subsec. (a) amended by act May 18, 1954, which inserted words "except sales to national banks and Federal savings and loan associations."

Subsec. (d) amended by act May 18, 1954, which repealed cl. (1) that exempted sales of food for human consumption off the premises where such food is sold, and substituted "50 cents" for "$1.25" in three instances in cl. (2).

EFFECTIVE DATE OF 1966 AMENDMENT

Repeal of subsec. (q) of this section by act Sept. 30, 1966, as effective on first day of first month which begins on or after thirtieth day after Sept. 30, 1966, see § 303 of such act, set out as a note under § 47–2602.

EFFECTIVE DATE OF 1957 AMENDMENT

Section 2 of act July 3, 1957, provided that subsection (r) shall be effective only with respect to sales taking place on and after January 1, 1957.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, effective on the first day of the first month which begins on or after the 60th day after Mar. 31, 1956, see section 206 of act Mar. 31, 1956, set out as a note under § 47–2601.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act May 18, 1954, effective on and after the first day of the first month succeeding the

60th day after May 18, 1954, see section 1309 of act May 18, 1954, set out as a note under § 47–2601.

SEVERABILITY OF PROVISIONS; RULES AND REGULATIONS

For severability of provisions with respect to act Sept. 30, 1966, Pub. L. 89–610, repealing subsec. (q) of this section, and authority to make rules and regulations to carry out provisions of such act, see §§ 1004 and 1005 thereof, set out as a note under § 25–124.

NOTES TO DECISIONS

Prior contracts

Provision of this section exempting sales of goods made pursuant to contracts entered into before date of approval of act, if there is contract in writing which imposes unconditional liability on part of purchaser to buy goods covered at fixed price and on vendor to deliver a definite quantity of such goods at contract price, did not exempt purchases made by contractor pursuant to construction contracts with United States and District of Columbia, when there was no proof of any contracts in writing, other than the three construction contracts, since relationships between parties to those contracts were not those of purchasers and vendors. *McShain, Inc.* v. *District of Columbia* (1953, 205 F. 2d 882, 92 U.S. App. D.C. 358, certiorari denied 74 S. Ct. 227, 346 U.S. 900, 98 L. Ed. 400).

Sales to United States or District

Provision of this section exempting sales to the United States or District or any instrumentality thereof, did not exempt from taxation purchases made by private contractor of materials and supplies for use in construction contracts with United States and District of Columbia, since when contractor purchased such materials, neither it nor its vendor was making sales of tangible personal property to the United States or the District. *McShain, Inc.* v. *District of Columbia* (1953, 205 F. 2d 882, 92 U.S. App. D.C. 358, certiorari denied 74 S. Ct. 227, 346 U.S. 900, 98 L. Ed. 400).

Government regulations pertaining to Sales and Use Taxes under this chapter, declaring that where contractor enters into construction contract with United States or District, contractor may purchase such materials and supplies as are to be physically incorporated in and become real property without payment of tax, means that the material must be physically present or incorporated in the structure, and it does not exempt from taxation products consumed in the course of construction. *Id.*

§ 47–2606. Tax to be separately stated.

Upon each sale of tangible personal property or services, the gross receipts from which are taxable under this chapter, the reimbursement of tax to be collected by the vendor from the purchaser under the provisions of this chapter shall be stated and charged separately from the sales price and shown separately on any record thereof at the time the sale is made or evidence of sale issued or employed by the vendor. (May 27, 1949, 63 Stat. 117, ch. 146, title I, § 129.)

§ 47–2607. Presumption of taxability.

It shall be presumed that all receipts from the sale of tangible personal property and services mentioned in this chapter are subject to tax until the contrary is established, and the burden of proving that a receipt is not taxable hereunder shall be upon the vendor or the purchaser as the case may be. Except as provided in section 47–2605 (c), unless the vendor shall have taken from the purchaser a certificate signed by and bearing the name and address of the purchaser and the number of his registration certificate to the effect that the property or service was purchased for resale, the receipts from all sales shall be deemed taxable. The certificate herein required shall be in such form as the Assessor shall prescribe and, in case no certificate is furnished or obtained prior to the time the sale is consummated, the tax shall apply to the gross receipts therefrom as if the sale were made at retail. (May 27, 1949, 63 Stat. 117, ch. 146, title I, § 130.)

§ 47–2608. Tax a personal debt—Period of limitation.

The tax imposed by this chapter and interest and penalties thereon shall become, from the time due and payable, a personal debt of the person liable to pay the same to the District. An action may be brought at any time within three years from the time the tax shall be due and payable in the name of the District to recover the amount of any taxes, penalties, and interest due under the provisions of this chapter, but such actions shall be utterly barred after the expiration of the aforesaid three years. (May 27, 1949, 63 Stat. 117, ch. 146, title I, § 131.)

§ 47–2609. Tax a preferred claim—Priority over property taxes.

Whenever the business or property of any person subject to tax under the terms of this chapter, shall be placed in receivership or bankruptcy, or assignment is made for the benefit of creditors, or if said property is seized under distraint for property taxes, all taxes, penalties, and interest imposed by this chapter for which said person is in any way liable shall be a prior and preferred claim. Neither the United States marshal, nor a receiver, assignee, or any other officer shall sell the property of any person subject to tax under the terms of this chapter under process or order of any court without first determining from the Collector the amount of any such taxes due and payable by said person, and if there be any such taxes due, owing, or unpaid under this chapter, it shall be the duty of such officer to first pay to the Collector the amount of said taxes out of the proceeds of said sale before making any payment of any moneys to any judgment creditor or other claimants of whatsoever kind or nature. Any person charged with the administration or distribution of any such property as aforesaid who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid which are chargeable against the person otherwise liable for tax under the terms of this section. (May 27, 1949, 63 Stat. 117, ch. 146, title I, § 132.)

NOTES TO DECISIONS

Construction with other laws

This section giving District a preferred claim for sales and use taxes when assignment is made for benefit of creditors, being a more specific and more limited enactment, creates an exception to general federal statute giving priority to the United States in payment of claims against insolvent debtor, and, hence, District's claim for unpaid sales and compensating use taxes was entitled to priority over tax claim of United States in respect to payment out of assets in hands of assignees for benefit of creditors. *United States* v. *Harry Saidman, Trustee, etc.* (1956, 231 F. 2d 503, 97 U.S. App. D.C. 344).

"Bankruptcy", within this section providing that claims should be a prior and preferred claim in cases where taxpayer is placed in receivership or bankruptcy, embraces only proceedings under local insolvency acts, and does not override Bankruptcy Act provision giving priority to taxes only after expenses of administration, wage claims and certain creditor expenses and barring

allowance of penalties, and District's claims for sales taxes and penalties were not entitled to priority. *District of Columbia* v. *Greenbaum, Trustee etc.* (1955, 223 F. 2d 633, 96 U.S. App. D.C. 168).

This section giving District a preferred claim for taxes when assignment is made for benefit of creditors has created an exception to 1797 general federal statute providing that insolvent person's debts due to United States shall be first satisfied, and hence District's tax claim had priority over tax claim of United States in respect to payment out of assets in hands of assignees for benefit of creditors. *In re Assignment of Lobel Enterprises, Inc.* (D.C.D.C. 1954, 126 F. Supp. 792, cause remanded on other grounds 231 F. 2d 503, 97 U.S. App. D.C. 344).

Insolvency proceedings

District of Columbia has preferred claim for taxes owed by a business when it is placed in receivership, becomes bankrupt, or makes an assignment for benefit of creditors or when its property is seized under distraint for property taxes. *District of Columbia* v. *Hechinger Properties Co.* (D.C. App. 1964, 197 A. 2d 157).

District of Columbia had existing choate leins against taxpayer's property for District of Columbia withholding and sales taxes assessed, due, or withheld prior to entry of judgment against taxpayer, and District was entitled to satisfaction out of funds otherwise payable to attaching judgment creditor, even though judgment had been entered and sale ordered before District served notice of levy and warrant for distraint for unpaid taxes. *Id.*

This section giving priority to District for unpaid gross sales taxes against a taxpayer in bankruptcy before all claimants of whatsoever kind or nature and making penalties and interest a prior and preferred claim gives District a priority in whatever local insolvency proceedings are instituted where bankrupt person or corporation involved is not eligible to become a bankrupt under the Bankruptcy Act. *District of Columbia* v. *Greenbaum, Trustee etc.* (1955, 223 F. 2d 633, 96 U.S. App. D.C. 168).

§ 47–2610. Collection of tax—Liens—Jeopardy assessments—Distraint.

The taxes imposed by this chapter and penalties and interest thereon may be collected by the Collector in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection; and liens for the taxes imposed by this chapter and penalties thereon may be acquired in the same manner that liens for personal property taxes are acquired. If the Assessor believes that the collection of any tax imposed by this chapter will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties, the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Collector for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful. (May 27, 1949, 63 Stat. 118, ch. 146, title I, § 133.)

NOTES TO DECISIONS

Notice of priority of lien

Better practice is for District of Columbia to give creditors or potential creditors notice of its prior personal property tax claims, but the notice is not required by statute providing for collection by distraint and levy and for acquisition of lien by filing of certificate of delinquent taxes. *District of Columbia* v. *Hechinger Properties Co.* (D.C. App. 1964, 197 A. 2d 157).

§ 47–2611. Assumption or refund of tax by vendor unlawful—Penalties.

It shall be unlawful for any vendor to advertise or hold out or state to the public or to any customer directly or indirectly that the reimbursement of tax or any part thereof to be collected by the vendor under this chapter will be assumed or absorbed by the vendor or that it will not be added to the selling price of the property sold or the taxable services rendered, or if added to said price that it, or any part thereof, will be refunded. Any person violating any provision of this section shall upon conviction be fined not more than $500 or imprisoned for not more than six months, or both, for each offense. (May 27, 1949, 63 Stat. 118, ch. 146, title I, § 134.)

§ 47–2612. Monthly returns to be filed.

(a) On or before the twentieth day of each calendar month, every vendor who has made any sale at retail, taxable under the provisions of this chapter, during the preceding calendar month, shall file a return with the Assessor. Such returns shall show the total gross proceeds of the vendor's business for the month for which the return is filed; the gross receipts of the business of the vendor upon which the tax is computed; the amount of tax for which the vendor is liable and such other information as the Assessor deems necessary for the computation and collection of the tax.

(b) The Assessor may permit or require the returns to be made for other periods and upon such other dates as he may specify: *Provided,* That the gross receipts during any tax year shall be included in returns covering such year and no other.

(c) The form of returns shall be prescribed by the Assessor and shall contain such information as he may deem necessary for the proper administration of this chapter. The Assessor may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice. (May 27, 1949, 63 Stat. 118, ch. 146, title I, § 135.)

§ 47–2613. Payment of tax.

(a) At the time of filing his return as provided by this chapter, the taxpayer shall pay to the Collector the taxes imposed by this chapter.

(b) The taxes for the period for which a return is required to be filed by a vendor under this chapter shall be due by the vendor and payable to the Collector on the date limited for the filing of the return for such period, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of gross receipts and taxes due thereon. (May 27, 1949, 63 Stat. 118, ch. 146, title I, § 136.)

§ 47–2614. Annual returns to be filed.

On or before thirty days after the end of the tax year of each vendor required to pay to the Collector the tax imposed by the provisions of this chapter, such vendor shall make an annual return for such tax year in such form as may be required by the Assessor. The Assessor for good cause shown may on the written application of a vendor extend the

time for making any return required by this section. (May 27, 1949, 63 Stat. 119, ch. 146, title I, § 137.)

§ 47–2615. Secrecy of returns—Reciprocity.

(a) Except to any official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee of the District to divulge or make known in any manner the amount of gross proceeds or any particulars relating thereto or the computation thereof set forth or disclosed in any return required to be filed under this chapter, and neither the original nor a copy of any such return desired for use in litigation in court shall be furnished where neither the District nor the United States is interested in the result of such litigation, whether or not the request is contained in an order of the court: *Provided, however,* That nothing herein contained shall be construed to prevent the furnishing to a taxpayer a copy of his return upon the payment of a fee of $2.

(b) Nothing contained in subsection (a) of this section shall be construed to prohibit the publication of notices authorized in this chapter or the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof, or the publication of delinquent lists showing the names of persons, vendors, or purchasers who have failed to pay the taxes imposed by this chapter within the time prescribed herein, together with any relevant information which in the opinion of the Assessor may assist in the collection of such delinquent taxes.

(c) Nothing contained in subsection (a) of this section shall be construed to prohibit the Assessor, in his discretion, from divulging or making known any information contained in any report, application, or return required under the provisions of this chapter other than such information as may be contained therein relating to the amount of gross proceeds or tax thereon or any particulars relating thereto or the computation thereof.

(d) Any violation of the provisions of subsection (a) of this section shall be punishable by a fine not exceeding $1,000 or imprisonment for six months or both, in the discretion of the court.

(e) Notwithstanding the provisions of this section, the Assessor may permit the proper officer of the United States or of any State or Territory of the United States or his authorized representative to inspect the returns filed under this chapter, or may furnish to such officer or representative a copy of any such return, provided the United States, State, or Territory grants substantially similar privileges to the Assessor or his representative or to the proper officer of the District charged with the administration of this chapter.

(f) All reports, applications, and returns received by the Assessor under the provisions of this chapter shall be preserved for three years and thereafter until the Assessor orders them to be destroyed. (May 27, 1949, 63 Stat. 119, ch. 146, title I, § 138.)

§ 47–2616. Determination of deficiencies.

If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the Assessor from such information as may be obtainable. Notice of such determination shall be given to the taxpayer. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within thirty days after the giving of notice of such determination, shall apply in writing to the Assessor for a hearing, or unless the Assessor of his own motion shall redetermine the same. After such hearing or redetermination the Assessor shall give notice of his final determination to the person against whom the tax is assessed. (May 27, 1949, 63 Stat. 119, ch. 146, title I, § 139.)

§ 47–2617. Refunds.

(a) Except as to any tax finally determined as provided in section 47–2616, where any tax has been erroneously or illegally collected, the tax shall be refunded if application under oath is filed with the Assessor for such refund within one year from the payment thereof. For like cause and within the same period a refund may be made upon the certificates of the Assessor and the Collector. Whenever a refund is made upon the certificates of the Assessor and the Collector, the Assessor and Collector shall state their reasons therefor in writing. Such application may be made by the person upon whom such tax was imposed and who has actually paid the tax. When an application is made by a vendor who has collected reimbursement of such tax, no actual refund of moneys shall be made to such vendor, until he shall first establish to the satisfaction of the Assessor, under such regulations as the Commissioners may prescribe, that the vendor has repaid to the purchaser the amount for which the application for refund is made. In lieu of any refund required to be made, a credit may be allowed therefor on payment due from the applicant.

(b) Application for a refund or credit made as herein provided shall be deemed an application for a revision of any tax, penalty, or interest complained of and the Assessor may receive evidence with respect thereto. After making his determination of whether any refund shall be made, the Assessor shall give notice thereof to the applicant. (May 27, 1949, 63 Stat. 120, ch. 146, title I, § 140.)

§ 47–2618. Appeals.

(a) Any vendor or purchaser aggrieved by a final determination of tax or denial of an application for refund of any tax may, within ninety days from the date of the final determination of the tax or from the date of the denial of an application for refund, as the case may be, appeal to the Board of Tax Appeals for the District of Columbia in the same manner and to the same extent as set forth in sections 47–2403, 47–2404 and 47–2407 to 47–2411. The remedy provided in this section shall not be deemed to take away from the taxpayer any remedy which he might have under any other provision of law, but no suit by the taxpayer for the recovery of any part of any tax shall be instituted in any court if the taxpayer has elected to file an appeal with respect to such tax with the Board of Tax Appeals for the District of Columbia.

(b) If it shall be determined by the Assessor, the Board of Tax Appeals for the District of Columbia, or any court having jurisdiction over the subject matter, that any part of any tax which was assessed

as a deficiency, and any interest thereon paid by the taxpayer, was an overpayment, interest shall be allowed and paid upon such overpayment of tax at the rate of 4 per centum per annum from the date such overpayment was paid until the date of refund. (May 27, 1949, 63 Stat. 120, ch. 146, title I, § 141.)

REDESIGNATION OF BOARD OF TAX APPEALS

Board of Tax Appeals redesignated as the District of Columbia Tax Court and the member thereof to be known as the judge of the District of Columbia Tax Court, see § 47–2402.

§ 47–2619. Sales in bulk.

Whenever there is made a sale, transfer, or assignment in bulk of any part or the whole of a stock of merchandise or of fixtures, or of merchandise and of fixtures, pertaining to the conducting of the business of the seller, transferor, or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee, or assignee shall at least five days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the Assessor by registered mail of the proposed sale and of the price, terms, and conditions thereof, irrespective of whether or not the seller, transferor, or assignor has represented to or informed the purchaser, transferee, or assignee that he owes any tax pursuant to this chapter or whether he has complied with section 28–1701, or whether or not he has knowledge that such taxes are owing, or whether any such taxes are in fact owing.

(b) Whenever the purchaser, transferee, or assignee shall fail to give the notice to the Assessor as required by section 47–2618, or whenever the Assessor shall inform the purchaser, transferee, or assignee that a possible claim for such tax or taxes exists, any sums of money, property, or choses in action, or other consideration, which the purchaser, transferee, or assignee is required to transfer over to the seller, transferor, or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferor, or assignor to the District, and the purchaser, transferee, or assignee is forbidden to transfer to the seller, transferor, or assignor any such sums of money, property, or choses in action to the extent of the amount of the District's claim. For failure to comply with the provisions of this section, the purchaser, transferee, or assignee shall be personally liable for the payment to the District of any such taxes theretofore or thereafter determined to be due to the District from the seller, transferor, or assignor, and such liability may be assessed and enforced in the same manner as the liability for tax under this chapter. (May 27, 1949, 63 Stat. 121, ch. 146, title I, § 142.)

§ 47–2620. Rules and regulations.

In addition to the powers granted to the Commissioners in this chapter, they are hereby authorized and empowered to make, adopt, and amend rules and regulations appropriate to the carrying out of this chapter and the purposes thereof. (May 27, 1949, 63 Stat. 121, ch. 146, title I, § 143.)

§ 47–2621. Additional powers of Assessor.

In addition to the powers granted to the Assessor in this chapter, he is hereby authorized and empowered—

(a) to extend for cause shown the time of filing any return for a period not exceeding thirty days; and for cause shown, to remit penalties and interest in whole or in part except as otherwise provided in this chapter; and to compromise disputed claims in connection with the taxes hereby imposed;

(b) to request information from the Bureau of Internal Revenue of the Treasury Department of the United States relative to any person for the purpose of assessing taxes imposed by this chapter; and said Bureau of Internal Revenue is authorized and required to supply such information as may be requested by the Assessor relative to any person for the purpose herein provided;

(c) to prescribe methods for determining the gross proceeds from sales made or services rendered and for the allocation of such sales into taxable and nontaxable sales;

(d) to require any vendor selling to persons within the District to keep detailed records of the nature and value of personal property sold for use within the District, and to furnish such information upon request to the Assessor;

(e) to assess, determine, revise, and readjust the taxes imposed under this chapter. (May 27, 1949, 63 Stat. 121, ch. 146, title I, § 144.)

CHANGE OF NAME

The official title of the Bureau of Internal Revenue was changed to the Internal Revenue Service by Treas. Dept. Order 150–29, eff. July 9, 1953.

§ 47–2622. Examination of records and witnesses.

The Assessor, for the purpose of ascertaining the correctness of any return filed as required by this chapter, or for the purpose of making a return where none has been made, is authorized to examine any books, papers, records, or memoranda, or any person bearing upon the matters required to be included in the return and may summon any person to appear before him and produce books, records, papers, or memoranda bearing upon the matters required to be included in the return and to give testimony or answer interrogatories under oath respecting the same, and the Assessor, or his duly authorized representative, shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person, having been personally summoned, shall neglect or refuse to obey the summons issued as herein provided, then in that event the Assessor, or the Deputy Assessor, may report that fact to the United States District Court for the District of Columbia, or one of the justices thereof, and said court or any justice thereof hereby is empowered to compel obedience to said summons to the same extent as witnesses may be compelled to obey the subpenas of that court. Any person in custody or control of any books, papers, records, or memoranda bearing upon the matters required to be included in such returns, who shall refuse to permit the examination by the Assessor or any person designated by him of any such books, papers, records, or memoranda, or who shall obstruct or hinder

the Assessor or any person designated by him in the examination of any books, papers, records, or memoranda, shall upon conviction thereof be fined not more than $500 or imprisoned for not more than six months, or both, for each offense. (May 27, 1949, 63 Stat. 122, ch. 146, title I, § 145.)

§ 47–2623. Certificate of registration.

(a) No person shall engage or continue to engage in the business of making any retail sales subject to tax under the provisions of this chapter without having obtained a certificate of registration therefor. If two or more persons constitute a single vendor as defined in this chapter, such persons may operate a single retail establishment under one certificate of registration and in such case neither the death or retirement of one or more of such persons from business in such establishment nor the entrance of one or more persons thereinto shall affect the certificate of registration for a period of sixty days or require the issuance of a new certificate until the expiration of such period.

(b) Each applicant for a certificate required by this section shall make out and deliver to the Assessor, upon a blank to be furnished by him for that purpose, a statement showing the name of the applicant, each retail establishment where the applicant's business is to be conducted, the kind or nature of such business and such other information as the Assessor may prescribe. Upon receipt of such application the Assessor shall issue the applicant, without charge, a certificate of registration for each retail establishment designated in the application, authorizing the applicant to engage in business at such retail establishment. The certificate of registration shall be nontransferable except as otherwise provided in this chapter, and shall be displayed in the applicant's place of business. The form of such certificate of registration shall be prescribed by the Assessor.

(c) In the case of a vendor who has no fixed place of business and sells from one or more vehicles, each such vehicle shall constitute a retail establishment for the purpose of this chapter. In the case of a vendor who has no fixed place of business and does not sell from a vehicle, the application for a certificate of registration shall set forth the address to which any notice or other communication authorized by this chapter may be sent to the applicant, and the place so designated shall constitute a retail establishment for the purposes of this chapter.

(d) Whoever engages in the business of selling tangible personal property at retail, or makes any sale which is subject to tax under the provisions of this chapter without having a certificate of registration therefor, as required by this section, shall, upon conviction thereof, be fined not more than $100. (May 27, 1949, 63 Stat. 122, ch. 146, title I, § 146.)

NOTES TO DECISIONS

Evidence

Evidence was sufficient to sustain conviction for violation of this chapter. *Scott, Jr.* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 579).

In prosecution for violations of this chapter, error, if any, in refusing to exclude testimony of government witness on ground that best evidence rule precluded his testimony as to certain Federal alcohol tax stamp records was cured by subsequent admission in evidence of the records, the contents of which were not at variance with witness' testimony. *Id.*

§ 47–2624. Penalties and interest.

(a) Any person failing to file a return or who files a false or incorrect return or who fails to pay any tax to the Collector within the time required by this chapter shall be subject to a penalty of 5 per centum of the amount of tax due, plus interest at the rate of one-half of 1 per centum of such tax for each month of delay after such return was required to be filed or such tax became due; but the Assessor, if satisfied that the delay was excusable may waive the penalty of 5 per centum. Unpaid penalties and interest may be collected in the same manner as the tax imposed by this chapter. The interest provided for in this section shall be applicable to any tax determined by the Assessor as a deficiency.

(b) The certificate of the Collector or Assessor, as the case may be, to the effect that a tax has not been paid, that a return has not been filed, or a registration certificate has not been obtained, or that information has not been supplied pursuant to the provisions of this chapter, shall be presumptive evidence thereof: *Provided,* That the presumptions created by this subsection shall not be applicable in criminal prosecutions. (May 27, 1949, 63 Stat. 123, ch. 146, title I, § 147; July 10, 1952, 66 Stat. 543, ch. 649, § 2(c).)

AMENDMENT

1952—Subsec. (a) amended by act July 10, 1952, which substituted "at the rate of one-half of 1 per centum of such tax for each month of delay after such return was required to be filed or such tax became due; but the Assessor, if satisfied that the delay was excusable may waive the penalty of 5 per centum" for "at the rate of 1 per centum of such tax for each month of delay excepting the first month after such return was required to be filed or such tax became due; but the Assessor, is satisfied that the delay was excusable, may waive all or any part of such penalty in excess of interest at the rate of 6 per centum per year."

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment of section by act July 10, 1952, effective July 1, 1952, see section 8 of act July 10, 1952, set out as a note under § 47–1619.

NOTES TO DECISIONS

In general

District of Columbia's claim against bankrupt for one percent per month payment on delinquent personal property taxes was, since in excess of legal interest rate and designated by statute a penalty, a "penalty" rather than "interest" and was barred by Bankruptcy Act. *District of Columbia* v. *Greenbaum, Trustee etc.* (1955, 223 F. 2d 633, 96 U. S. App. D. C. 168).

§ 47–2625. Failure to file return.

(a) Any person required to file a return or report or perform any act under the provisions of this chapter who shall fail or neglect to file such return or report or perform such act within the time required shall, upon conviction thereof, be fined not more than $300 for each and every failure or neglect. The penalty provided herein shall be in addition to the other penalties provided in this chapter.

(b) Any person required to file a return or report or perform any act under the provisions of this chapter who willfully fails or refuses to file such

return or report or perform such act within the time required shall, upon conviction thereof, be fined not more than $5,000 or imprisoned for not more than one year or both. The penalty provided herein shall be in addition to the other penalties provided in this chapter. (May 27, 1949, 63 Stat. 123, ch. 146, title I, § 148.)

NOTES TO DECISIONS

Conduct of counsel

Defendant's former attorney, who, in criminal proceeding, was representing, at same time, both defendant and government's principal witness against defendant, could not have given defendant the undivided and undiluted fidelity to which defendant was entitled, and, therefore, new trial would be ordered following defendant's conviction for violation of this chapter. *Scott* v. *District of Columbia* (D. C. Mun. App. 1953, 99 A. 2d 641).

Defenses

In prosecution of operator of automobile body works for failing to file monthly sales and use tax returns as required by this chapter, fact that others who allegedly violated this chapter were not proceeded against by Assessor of Taxes was no defense. *Perlich* v. *District of Columbia* (D.C. Mun. App. 1952, 90 A. 2d 227).

Evidence

In prosecution for violations of this chapter, error, if any, in refusing to exclude testimony of government witness on ground that best evidence rule precluded his testimony as to certain Federal alcohol tax stamp records was cured by subsequent admission in evidence of the records, the contents of which were not at variance with witness' testimony. *Scott, Jr.* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 579).

Evidence was sufficient to sustain conviction for violation of this chapter. *Id.*

Jury trial

In prosecution of operator of an automobile body works for failing to file monthly sales and use tax returns as required by this chapter, defendant was not entitled to jury trial as matter of right in view of fact that such statutory offense is essentially petty in nature, does not involve moral turpitude, and would not be indictable at common law. *Perlich* v. *District of Columbia* (D.C. Mun. App. 1952, 90 A. 2d 227).

Privilege

Treasury Department Regulation prohibiting disclosure of official information was promulgated for benefit of the United States Government, and the privilege against disclosure of official information could be claimed by the government alone, not by defendant in prosecution for violation of this chapter, and, therefore, testimony of Internal Revenue Agents concerning defendant's admissions to them in course of Federal tax violation investigation was proper. *Scott, Jr.* v. *District of Columbia* (D.C. Mun. App. 1956, 122 A. 2d 579).

Questions for jury

In prosecution of operator of automobile body works for failing to file monthly sales and use tax returns as required by this chapter, whether Government had waived offense, as alleged by defendant who claimed that though defendant was late in filing defendant was told by a tax official that matter would be dropped if defendant filed return, was for jury. *Perlich* v. *District of Columbia* (D. C. Mun. App. 1952, 90 A. 2d 227).

Review

An operator of automobile body works who was convicted of failing to file monthly sales and use tax returns as required by this chapter could not for first time on appeal claim that prosecution was illegal because of absence of signature on information of assistant to corporation counsel attesting oath of complaining wtness. *Perlich* v. *District of Columbia* (D. C. Mun. App. 1952, 90 A. 2d 227).

Sentence

Where trial court imposed a money fine against defendant operator of automobile body works for failure to file monthly sales and use tax returns as required by this chapter, trial court under this chapter could enforce payment of fine by ordering defendant in the alternative to serve a jail sentence. *Perlich* v. *District of Columbia* (D. C. Mun. App. 1952, 90 A. 2d 227).

§ 47–2626. Assessment of deficiencies — Limitations thereupon.

The Assessor shall determine, redetermine, assess, or reassess, any tax imposed by this chapter, except in cases where the tax is correct as computed in any return filed with the Assessor, within three years after the filing of any return, except as follows:

(a) In the case of a false return, or a failure to file a return, whether in good faith or otherwise, the tax may be assessed at any time.

(b) In the case of an incorrect return which has not been prepared as required by this chapter and by the return and instructions, rules, or regulations applicable thereto, the tax shall be assessed or reassessed within five years after the filing of such return. (May 27, 1949, 63 Stat. 123, ch. 146, title I, § 149.)

§ 47–2627. Prosecutions.

All prosecutions under this chapter shall be brought in the District of Columbia Court of General Sessions on information by the Corporation Counsel of the District in the name of the District of Columbia. (May 27, 1949, 63 Stat. 124, ch. 146, title I, § 150; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 47–2628. Notices—How given.

Any notice authorized or required under the provisions of this chapter may be given by mailing the same to the person for whom it is intended in an envelope, postage prepaid, addressed to such person at the address given in the last return filed by him pursuant to the provisions of this chapter or, if no return has been filed, then to the last address of such person. If the address of any person is unknown, such notice may be published in one or more of the daily newspapers in the District of Columbia for three successive days. The cost of any such advertisement in newspapers shall be added to the tax. The proof of mailing of any notice required or authorized in this chapter shall be presumptive evidence of the receipt of such notice by the person to whom addressed. The proof of publishing any notice required in this chapter in one or more of the daily newspapers in the District shall be conclusive notice to the person for whom such notice is intended. (May 27, 1949, 63 Stat. 124, ch. 146, title I, § 151.)

§ 47–2629. Extensions of time.

Where, before the expiration of the period prescribed herein for the assessment or redetermination of an additional tax, a taxpayer has consented in writing that such period be extended, the amount of such tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent con-

sents in writing made before the expiration of the extended period. (May 27, 1949, 63 Stat. 124, ch. 146, title I, § 152.)

Chapter 27.—COMPENSATING-USE TAX

Sec.
47–2701. Definitions.
47–2702. Imposition of tax.
47–2703. Collection of tax by vendor.
47–2704. Non-resident vendors.
47–2705. Payment of tax by purchaser.
47–2706. Exemptions.
47–2707. Collection of tax.
47–2708. Surety bonds may be required.
47–2709. Assumption or refund of tax unlawful—Penalty.
47–2710. Returns and payment of tax.
47–2711. Monthly returns to be filed—Content and form—Payment of tax.
47–2712. Certificate of registration.
47–2713. Application of sections 47–2616 to 47–2622 and 47–2624 to 47–2629.

§ 47–2701. Definitions.

1. (a) "Retail sale", "sale at retail", and "sold at retail" means all sales in any quantity or quantities of tangible personal property, whether made within or without the District, and services, to any person for the purpose of use, storage, or consumption, within the District, taxable under the terms of this chapter. These terms shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include, but shall not be limited to, the following:

(1) Any production, fabrication, or printing of tangible personal property on special order for a consideration.

(2) The sale of natural or artificial gas, oil, electricity, solid fuel or steam, when made to any purchaser for purposes other than resale or for use in manufacturing, assembling, processing or refining.

(3) The sale of material used in the construction, and of materials used in the repair or alteration, of real property, which materials, upon completion of such construction, alterations, or repairs, become real property, regardless of whether or not such real property is to be sold or resold.

(4) The sale or charges for possession or use of any article of tangible personal property granted under a lease or contract, regardless of the length of time of such lease or contract or whether such lease or contract is oral or written; in such event for the purposes of this chapter, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rental paid: *Provided, however,* That the gross proceeds from the rental of films, records, or any type of sound transcribing to theaters and radio and television broadcasting stations shall not be considered a retail sale: *Provided further,* That the gross proceeds from the rental of textiles, the essential part of which rental includes recurring service of laundering or cleaning thereof, shall not be considered a retail sale.

(5) The sale of any meals, food or drink, or other like tangible personal property for a consideration.

(b) The terms "retail sale", "sale at retail", and "sold at retail" shall not include the following:

(1) Sales of tickets for admission to places of amusement and sports.

(2) Sales of transportation and communication services.

(3) Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made.

(4) Sales of tangible personal property which property was purchased or acquired by a nonresident prior to coming into the District and establishing or maintaining a temporary or permanent residence in the District. As used in this subsection, the word "residence" means a place in which to reside and does not mean "domicile".

(5) Sales of tangible personal property which property was purchased or acquired by a nonresident person prior to coming into the District and establishing or maintaining a business in the District.

(6) The use or storage within the District of tangible personal property owned and held by a common carrier or sleeping-car company for use principally without the District in the course of interstate commerce, or commerce between the District and a State, in or upon, or as part of, any train, aircraft, or boat.

2. "Purchase" and "purchased" shall mean and include—

(a) any transfer, either conditionally or absolutely, of title or possession or both of the tangible personal property sold at retail;

(b) any acquisition of a license or other authority to use, store, or consume, the tangible personal property sold at retail;

(c) any sale of services sold at retail.

3. "Purchaser" means any person who shall have purchased tangible personal property or services sold at retail.

4. "In the District" and "within the District" mean within the exterior limits of the District of Columbia and include all territory within such limits owned by the United States of America.

5. "Store" and "storage" mean any keeping or the retention of possession in the District for any purpose of tangible personal property purchased at retail sale.

6. "Use" means the exercise by any person within the District of any right or power over tangible personal property and services sold at retail, whether purchased within or without the District by a purchaser from a vendor.

7. "Vendor" includes every person or retailer engaging in business in the District and making sales at retail as defined herein, whether for immediate or future delivery of the tangible personal property or performance of the services. When in the

opinion of the Assessor it is necessary for the efficient administration of this chapter to regard any salesman, representative, peddler, or canvasser, as the agent of the dealer, distributor, supervisor, or employer, under whom he operates or from whom he obtains the tangible personal property sold or furnishes services, the Assessor may, in his discretion, treat and regard such agent as the vendor jointly responsible with his principal, employer, or supervisor, for the assessment and payment or collection of the tax imposed by this chapter.

8. "Engaging in business in the District" includes the selling, delivering, or furnishing in the District, or any activity in the District in connection with the selling, delivering, or furnishing in the District, of tangible personal property or services sold at retail as defined herein. This term shall include but shall not be limited to the following acts or methods of transacting business:

(a) The maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, of any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.

(b) The having of any representative, agent, salesman, canvasser, or solicitor operating in the District for the purpose of making sales at retail as defined herein, or the taking of orders for such sales.

9. "Retailer" includes every person engaged in the business of making sales at retail.

10. The definitions of "business", "food", "gross receipts", "person", "purchaser's certificate", "retail establishment", "return", "sale" and "selling", "sales price", "semipublic institution", "tangible personal property", "tax", "tax year", "taxpayer", "Assessor", "Collector", "Commissioners", and "District", as defined in chapter 26 of this title, are hereby incorporated in and made applicable to this chapter.

11. The foregoing definitions shall be applicable whenever the words defined are used in this chapter unless otherwise required by the context. (May 27, 1949, 63 Stat. 124, ch. 146, title II, § 201–211; May 18, 1954, 68 Stat. 118, ch. 218, title XIII, § 1306; Mar. 31, 1956, 70 Stat. 81, ch. 154, § 205.)

AMENDMENTS

1956—Par. 1(a)(4) amended generally by act Mar. 31, 1956. Prior to such amendment, such paragraph read as follows: "The grant of the right to continuous possession or use of any article of tangible personal property granted under a lease or contract if such grant of possession would be taxable if outright sale were made; in such event such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rentals paid."

1954—Par. 1(a)(5) added by act May 18, 1954.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Mar. 31, 1956, effective on the first day of the first month which begins on or after the 60th day after Mar. 31, 1956, see section 206 of act Mar. 31, 1956, set out as a note under § 47–2601.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act May 18, 1954, effective on and after the first day of the first month succeeding the 60th day after May 18, 1954, see section 1309 of act May 18, 1954, set out as a note under § 47–2601.

SHORT TITLE

Section 1 of act May 27, 1949, provided in part that: "Title II of this Act [this chapter] may be cited as the 'District of Columbia Use Tax Act.' "

NOTES TO DECISIONS

Material to be produced for sale

Cartons which bottling companies delivered to customers with bottled drinks were not used or incorporated as material or part of other property to be produced for sale, within meaning of this chapter excluding from use tax property purchased for use as material or part of other tangible personal property to be produced for sale. *District of Columbia* v. *Seven-Up Washington, Inc.* (1954, 214 F. 2d 197, 93 U.S. App. D.C. 272, certiorari denied 74 S. Ct. 851, 347 U.S. 989, 98 L. Ed. 1123).

Professional or personal service transactions

Sales to newspaper of mats bearing impressions of current sequence of comic strips, with right to reproduce one time the work of artists who made the drawings, were sales of professional and personal services of the artists which involved transfer of title to the mats, of inconsequential value, from which drawings could be reproduced, and hence were within exemption from sales and use taxes granted by par. 1(b)(3) of this section to professional, insurance or personal service transactions which involve sales as inconsequential elements for which no separate charges are made. *Washington Times-Herald, Inc.* v. *District of Columbia* (1954, 213 F. 2d 23, 94 U. S. App. D. C. 154).

Property acquired for purpose of resale

Cartons, which bottling companies delivered to customers with bottled drinks, upon which no credit or refund for return was allowed, and which were not drawn back into more or less constant use by companies, were property "acquired for purpose of resale" within meaning, as construed in Regulations, of this chapter which exempts from use tax property acquired for purpose of resale. *District of Columbia* v. *Seven-Up Washington, Inc.* (1954, 214 F. 2d 197, 93 U. S. App. D. C. 272, certiorari denied 74 S. Ct. 851, 347 U. S. 989, 98 L. Ed. 1123).

Where bottling companies bought bottles and cases and sold them, filled with beverages, at prices smaller than the cost of the bottles and cases, in expectation that bottles and cases would be returned for refund, the bottles and cases were not "acquired for purpose of resale" within meaning of this chapter excluding from use tax property purchased for resale. *Id.*

Under this chapter excluding from use tax property which is acquired for purpose of resale, property is not excluded simply because it is resold, but it is excluded only when it is purchased specifically for the purpose of resale. *Id.*

§ 47–2702. Imposition of tax.

Beginning on and after August 1, 1949, there is hereby imposed and there shall be paid by every vendor engaging in business in the District and by every purchaser a tax on the use, storage, or consumption of any tangible personal property and services sold or purchased at retail sale. The tax hereby imposed shall be at the rate of 3 per centum of the sale price of the tangible personal property or services rendered or sold, except that the rate of tax with respect to sales of food for human consumption off the premises where such food is sold shall be 1 per centum of the sales price of such sales. (May 27, 1949, 63 Stat. 126, ch. 146, title II, § 212; May 18, 1954, 68 Stat. 118, ch. 218, title XIII, § 1307; Mar. 2, 1962, 76 Stat. 10, Pub. L. 87–408, § 102.)

AMENDMENTS

1962—Act Mar. 2, 1962, 76 Stat. 10, Pub. L. 87–408, § 102, amended section by striking out "2 per centum" and inserting in lieu "3 per centum".

1954—Act May 18, 1954, provided for a tax at the rate of 1 per centum of the sales price with respect to sales of

food for human consumption off the premises where such food is sold.

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 47–2602.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act May 18, 1954, effective on and after the first day of the first month succeeding the 60th day after May 18, 1954, see section 1309 of act May 18, 1954, set out as a note under § 47–2601.

NOTES TO DECISIONS

In general

Where personal property was purchased by contractor subsequent to passage of chapter 26 of this title, fact that construction contracts with reference to which purchases were made had been entered into before passage of chapter 26 of this title, did not absolve contractor from payment of the use tax, since it is the purchase or use itself, and not the signing of the contracts ultimately necessitating the purchase, which is the taxable event. *John McShain, Inc.* v. *District of Columbia* (1953, 205 F. 2d 882, 92 U.S. App. D.C. 358, certiorari denied 74 S. Ct. 227, 346 U.S. 900, 98 L. Ed. 400).

§ 47–2703. Collection of tax by vendor.

Every vendor engaging in business in the District and making sales at retail shall, for the privilege of making such sales, pay to the Collector the tax imposed by this chapter. At the time of making such sales the vendor shall collect the tax from the purchaser and give to the purchaser a receipt therefor in such form as prescribed by the Assessor. For the purpose of uniformity of tax collection by the vendor engaging in business in the District and for other purposes the provisions of sections 47–2603, 47–2604, 47–2606 and 47–2607 are hereby incorporated in and made applicable to this chapter. (May 27, 1949, 63 Stat. 126, ch. 146, title II, § 213.)

§ 47–2704. Non-resident vendors.

Every vendor or retailer not engaging in business in the District who makes sales at retail as defined in this chapter, and who upon application to the Collector has been expressly authorized to pay the tax imposed by this chapter, shall, at the time of making such sales, collect the reimbursement of the tax from the purchaser and give to the purchaser a receipt therefor in such form as prescribed by the Assessor. For the purpose of uniformity of tax collection by the vendor or retailer who has been expressly authorized to pay the tax under the provisions of this section and for other purposes, the provisions of sections 47–2603, 47–2604, 47–2606 and 47–2607 are hereby incorporated in and made applicable to this chapter. A permit shall be issued to such vendor or retailer, without charge, to pay the tax and collect reimbursement thereof as provided herein. Such permit may be revoked at any time by the Collector who shall thereupon give notice thereof to the vendor or retailer. (May 27, 1949, 63 Stat. 126, ch. 146, title II, § 214.)

§ 47–2705. Payment of tax by purchaser.

If a purchaser has not reimbursed for the tax such vendors or retailers as are required or authorized to pay the tax, as the case may be, such purchaser shall file a return as hereinafter provided and pay to the Collector a tax at the rates provided in section 47–2602 on the sales prices of property and services purchased at retail sale. (May 27, 1949, 63 Stat. 127, ch. 146, title II, § 215; May 18, 1954, 68 Stat. 118, ch. 218, title XIII, § 1308.)

AMENDMENT

1954—Act May 18, 1954, substituted "a tax at the rates provided in section 47–2602 on the sales prices" for "2 per centum of the total sales prices."

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment of section by act May 18, 1954, effective on and after the first day of the first month succeeding the 60th day after May 18, 1954, see section 1309 of act May 18, 1954, set out as a note under § 47–2601.

§ 47–2706. Exemptions.

The tax imposed by this chapter shall not apply to the following:

(a) Sales upon which taxes are imposed under chapter 26 of this title.

(b) Sales exempt from the taxes imposed under chapter 26 of this title.

(c) Sales upon which the purchaser has paid a retail sales tax or made reimbursement therefor to a vendor or retailer under the laws of any State or territory of the United States. (May 27, 1949, 63 Stat. 127, ch. 146, title II, § 216.)

§ 47–2707. Collection of tax.

The provisions of sections 47–2608, 47–2609, and 47–2610 are hereby incorporated in and made applicable to this chapter. (May 27, 1949, 63 Stat. 127, ch. 146, title II, § 217.)

NOTES TO DECISIONS

Priority

Chapter 26 of this title giving District a preferred claim for sales and use taxes when assignment is made for benefit of creditors, being a more specific and more limited enactment, creates an exception to general federal statute giving priority to the United States in payment of claims against insolvent debtor, and, hence, District's claim for unpaid sales and compensating use taxes was entitled to priority over tax claim of United States in respect to payment out of assets in hands of assignees for benefit of creditors. *United States* v. *Harry Saidman, Trustee, etc.* (1956, 231 F. 2d 503, 97 U.S. App. D.C. 344).

§ 47–2708. Surety bonds may be required.

Every vendor or retailer not engaging in business in the District who has been expressly authorized to pay the tax imposed by this chapter and collect reimbursement therefor, and every vendor engaging in business in the District, may, in the discretion of the Collector, be required to file with the Collector a bond not exceeding the amount of $10,000 with such sureties as the Collector deems necessary, and for such duration not exceeding five years as the Collector deems necessary, conditioned upon the payment of the tax due from any vendor or retailer for any period covered by any return required to be filed under this chapter. (May 27, 1949, 63 Stat. 127, ch. 146, title II, § 218.)

§ 47–2709. Assumption or refund of tax unlawful—Penalty.

The provisions of section 47–2611 are hereby incorporated in and made applicable to this chapter. (May 27, 1949, 63 Stat. 127, ch. 146, title II, § 219.)

§ 47–2710. Returns and payment of tax.

The provisions of sections 47–2612, 47–2613, 47–2614, and 47–2615 are hereby incorporated in and

made applicable to this chapter. Every vendor, and every vendor or retailer not engaging in business in the District who is expressly authorized to pay the tax, shall file returns and pay the tax in accordance with the provisions of such sections applicable to the filing of returns and the payment of the tax and as shall be prescribed by regulation. (May 27, 1949, 63 Stat. 127, ch. 146, title II, § 220.)

§ 47–2711. Monthly returns to be filed—Content and form—Payment of tax.

(a) Every purchaser who is required to pay a tax under this chapter shall file a return with the Assessor within twenty days after the end of each calendar month. Such returns shall show the total sales prices of all tangible personal property and services purchased at retail sale upon which the tax imposed has not been paid by the purchaser to vendors or retailers, the amount of tax for which the purchaser is liable, and such other information as the Assessor deems necessary for the computation and collection of the tax.

(b) The Assessor may permit or require the returns of purchasers to be made for other periods and upon such other dates as he may specify.

(c) The return filed by a purchaser shall include the sales prices of all tangible personal property and services purchased at taxable retail sale during the calendar month or other period for which the return is filed and upon which the tax imposed has not been reimbursed by the purchaser to vendors or retailers.

(d) The form of returns shall be prescribed by the Assessor and shall contain such information as he may deem necessary for the proper administration of this chapter. The Assessor may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

(e) At the time of filing his return as provided in this section the purchaser shall pay to the Collector the amount of tax for which he is liable as shown by such return.

(f) The taxes for the period for which a return is required to be filed under this section shall be due by the taxpaper and payable to the Collector on the date limited for the filing of the return for such period, without regard to whether a return is filed or whether the return which is filed correctly shows the amount of the total sales prices and taxes due thereon. (May 27, 1949, 63 Stat. 127, ch. 146, title II, § 221.)

§ 47–2712. Certificate of registration.

The provisions of section 47–2623 are hereby incorporated in and made applicable to this chapter: *Provided,* That vendors and persons who have been issued certificates of registration under chapter 26 of this title shall not be required to have such certificates under this chapter. (May 27, 1949, 63 Stat. 128, ch. 146, title II, § 222.)

§ 47–2713. Application of sections 47–2616 to 47–2622 and 47–2624 to 47–2629.

The provisions of sections 47–2616 to 47–2622 and 47–2624 to 47–2629 are hereby incorporated in and made applicable to this chapter. (May 27, 1949, 63 Stat. 128, ch. 146, title II, § 223.)

Chapter 28.—CIGARETTE TAX

Sec.
47–2801. Definitions.
47–2802. Imposition of tax.
47–2803. Vendor to be licensed.
47–2804. Issuance of vendor's license.
47–2805. Types of licenses.
47–2806. Period of licenses—Suspensions and revocations.
47–2807. Tax to be in addition to other taxes.
47–2808. Administration—Rules and regulations.
47–2809. Personnel and expenses authorized.
47–2810. Violations—Penalties—Prosecutions.
47–2811. Redemption of cigarette or alcoholic-beverage tax stamps.

§ 47–2801. Definitions.

As used in and for the purposes of this chapter, unless the context indicates otherwise:

(a) The word "cigarette" shall mean any roll of tobacco, or any substitute therefor, wrapped in paper or in any substance other than tobacco.

(b) The word "person" shall mean any individual, partnership, corporation, association, receiver, executor, administrator, trustee, conservator, or other representative appointed by order of any court.

(c) The word "District" shall mean the District of Columbia.

(d) The word "Commissioners" shall mean the Commissioners of the District of Columbia.

(e) The words "designated District agency" shall mean any officer, employee, department, office, or agency in or under the municipal government of the District of Columbia who or which is designated by the Commissioners to perform a function or duty under the terms and provisions of this title.

(f) The word "sell" or "sale" shall include offering for sale, keeping for sale, bartering, trafficking in, peddling, and any transfer or exchange in any manner or by any means for a consideration.

(g) The term "original package" shall mean the individual package, parcel, or other container in which cigarettes are put up by the manufacturer to which is affixed the required United States Government Internal Revenue stamp, and the Commissioners may, by regulation, include within this definition any wrapper immediately enclosing such package, parcel, or other container.

(h) The word "stamp" shall include impressions made by metering machines authorized to be used under the provisions of this chapter. (May 27, 1949, 63 Stat. 136, ch. 146, title VI, § 602.)

EFFECTIVE DATE

Section 613 of act May 27, 1949, provided that: "The provisions of this title [this chapter] shall take effect on the first day of the first month succeeding the sixtieth day after the approval of this Act [May 27, 1949]."

SHORT TITLE

Sec. 601 of act May 27, 1949, provided that: "Title VI of act May 27, 1949, which is classified to this chapter, may be cited as the 'District of Columbia Cigarette Tax Act'."

DISTRICT OF COLUMBIA APPROPRIATION ACT, 1903

Section 612 of act May 27, 1949, provided that: "Nothing in this title [this chapter] shall be construed as repealing any portion of section 7 of the District of Columbia Appropriation Act for the fiscal year ending June 30, 1903, approved July 1, 1902, as amended."

§ 47–2802. Imposition of tax.

(a) There shall be levied, collected, and paid on all cigarettes sold in the District by licensed wholesalers, licensed retailers, or by licensed vending-

machine operators, to consumers, a tax at the rate of 3 cents on each twenty cigarettes or fractional part thereof, such tax to be levied, collected, and paid once only on cigarettes sold as aforesaid.

(b) Said tax shall be collected by and paid to the Collector of Taxes of the District and shall be deposited in the Treasury of the United States to the credit of the District.

(c) Said tax shall be collected and paid by the affixture of a stamp or stamps secured from the Collector of Taxes, denoting the payment of the amount of the tax imposed by this chapter upon such cigarettes, each such affixture to be on the original package, unless the Commissioners shall by regulation permit otherwise. Cancellation of such stamps shall be in the manner prescribed by regulation approved by the Commissioners.

(d) The Collector of Taxes shall furnish suitable stamps, to be prescribed by the Commissioners, denoting the payment of the tax imposed by this chapter and shall by the sale of such stamps at the amounts indicated on the faces thereof cause the said taxes to be collected.

(e) If at the time of acquisition of original packages by licensed retailers or by licensed vending-machine operators such original packages do not have affixed thereto the stamp or stamps denoting payment of the tax imposed by this chapter it shall be the duty of each such retailer and vending-machine operator to affix to each such original package such stamp or stamps before selling or delivering cigarettes to consumers and before removing or permitting the removal of cigarettes from the licensed premises or licensed vending machines of such retailers or operators for delivery to consumers.

(f) No person shall use or cause to be used for the payment of the tax imposed by this chapter a stamp already theretofore used for the payment of any such tax.

(g) Any person who shall counterfeit or forge any stamp required or authorized by this chapter shall, upon conviction, be subject to a fine not exceeding $5,000 or to imprisonment of not more than two years, or to both such fine and imprisonment.

(h) The Commissioners are authorized by regulation to permit licensees to pay the tax imposed by this chapter by the method of imprinting impressions upon original packages by the use of metering devices in lieu of the method of paying such tax by the affixture of stamps: *Provided*, That the Collector of Taxes shall control the use of such metering devices. In addition to their usual meanings the terms "affix stamp", "affixture of stamp or stamps", and like terms shall mean and include the imprinting of impressions denoting payment of the tax imposed by this chapter as authorized by this section.

(i) Stamps may be purchased only by licensed wholesalers, by licensed retailers, and by licensed vending-machine operators. Discount from face value of such stamps at a rate not to exceed 10 per centum may be allowed under such terms and conditions as the Commissioners may by regulation prescribe. (May 27, 1949, 63 Stat. 137, ch. 146, title VI, § 603; May 18, 1954, 68 Stat. 115, ch. 218, title IX, § 901; Sept. 30, 1966, 80 Stat. 856, Pub. L. 89–610, title IV, § 401.)

AMENDMENTS

1966—Subsection (a) amended by act Sept. 30, 1966, which substituted "three cents" for "two cents".

1954—Subsec. (a) amended by act May 18, 1954, which substituted "2 cents" for "1 cent."

EFFECTIVE DATE OF 1966 AMENDMENT; APPLICABILITY TO STOCK HELD PRIOR TO EFFECTIVE DATE; STATEMENTS; RECORDS OF INVENTORIES; PUNISHMENT FOR VIOLATIONS

Section 402 of act Sept. 30, 1966, 80 Stat. 856, Pub. L. 89–610, title IV, provided:

"(a) Except as otherwise provided, the amendment made by section 401 [to subsec. (a) of this section] shall apply with respect to cigarette tax stamps purchased on and after the effective date of this title [said § 401 and this section § 402 of the act] which shall be the first day of the first month which begins on or after the thirtieth day after the date of the enactment of this Act [Sept. 30, 1966].

"(b) In the case of cigarette tax stamps which have been purchased prior to the effective date of this title and which on such date are held (affixed to a cigarette package or otherwise) by a wholesaler, retailer, or vending machine operator, licensed under the District of Columbia Cigarette Tax Act, such licensee shall pay to the Commissioner (in accordance with subsection (c)) an amount equal to the difference between the amount of tax represented by such tax stamps on the date of their purchase and the amount of tax which an equal number of cigarette tax stamps would represent if purchased on the effective date of this title.

"(c) Within twenty days after the effective date of this title, each such licensee shall (1) file with the Commissioners a sworn statement (on a form to be prescribed by the Commissioners) showing the number of such cigarette tax stamps held by him as of the beginning of the day on which this title becomes effective or, if such day is a Sunday, as of the beginning of the following day, and (2) within twenty days after the effective date of this title, pay to the Commissioners the amount specified in subsection (b).

"(d) Each such licensee shall keep and preserve for the period of twelve months immediately following the effective date of this title the inventories and other records made which form the basis for the information furnished to the Commissioners on the sworn statement required to be filed under this section.

"(e) For purposes of this section, a tax stamp shall be considered as held by a wholesaler, retailer, or vending machine operator if title thereto has passed to such wholesaler, retailer, or operator (whether or not delivery to him has been made) and if title to such stamp has not at any time been transferred to any person other than such wholesaler, retailer, or operator.

"(f) A violation of the provisions of subsection (b), (c), or (d) of this section shall be punishable as provided in section 611 of the District of Columbia Cigarette Tax Act (D.C. Code, sec. 47–2810)."

EFFECTIVE DATE OF 1954 AMENDMENT

Section 905 of act May 18, 1954, provided that: "The provisions of this title [amending this section and enacting provisions set out as notes under this section] shall become effective on the first day of the first month succeeding the thirtieth day after the approval of this Act [May 18, 1954]."

EFFECTIVE DATE

Section effective on the first day of the first month succeeding the sixtieth day after May 27, 1949, see note under § 47–2801.

CONSTRUCTION; SEVERABILITY OF PROVISIONS; RULES AND REGULATIONS

For definition "Commissioners", as used in the above-quoted provisions of act Sept. 30, 1966, Pub. L. 89–610, and for construction of such act, which also amended subsec. (a) of this section, severability of provisions with respect thereto, and authority to make rules and regulations to carry out provisions thereof, see §§ 1002—1005 of such act, set out as a note under § 25–124.

TRANSITORY PROVISIONS OF ACT MAY 18, 1954

Section 902–904 of act May 18, 1954, provided that:

"SEC. 902. Within ten days after the effective date of this title, every holder of a wholesaler's, retailer's, or vending machine operator's license under said Act shall file with the Collector of Taxes a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind of stamps denoting payment of cigarette taxes affixed to packages of cigarettes held or possessed by such licensee or anyone for him at the beginning of the day on which this title becomes effective, and shall, within fifteen days after the effective date of this title, pay to the Collector of Taxes the difference between the amount of tax represented by such stamps and the amount of tax imposed by the District of Columbia Cigarette Tax Act as amended by this title.

"SEC. 903. Within ten days after the effective date of this title, every holder of a wholesaler's, retailer's, or vending machine operator's license under said Act shall file with the Collector of Taxes a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind of stamps held or possessed by such licensee or anyone for him which were not affixed to packages of cigarettes at the beginning of the day on which this title becomes effective, and shall, within fifteen days after the effective date of this title, surrender such stamps to the Collector of Taxes. The Collector of Taxes shall credit the amount of tax represented by the stamps surrendered against new stamps purchased by such licensees. In lieu of the credit allowed for surrendering stamps as provided in this section, the licensee shall be entitled to a refund of the amount of tax represented by the stamps surrendered as an overpayment of tax in the same manner and to the same extent as provided in section 4 of the Act of July 10, 1952 (66 Stat. 543, 546, ch. 649): *Provided,* That the requirement that the amount of refund shall not exceed the portion of tax paid during the two years immediately preceding the filing of the claim for refund shall not be applicable."

"SEC. 904. Any violation of the provisions of this title shall constitute a violation under the District of Columbia Cigarette Tax Act and regulations promulgated pursuant thereto."

§ 47–2803. Vendor to be licensed.

No person shall within the District of Columbia, manufacture for sale, keep for sale, sell, or offer to sell cigarettes, or display cigarettes for sale in vending machines, without having first obtained a license or licenses under this chapter for such purpose or purposes. (May 27, 1949, 63 Stat. 138, ch. 146, title VI, § 604.)

EFFECTIVE DATE

Section effective on the first day of the first month succeeding the sixtieth day after May 27, 1949, see note under § 47–2801.

§ 47–2804. Issuance of vendor's license.

The designated District agency is authorized to issue licenses to individuals, partnerships, or corporations, but not to unincorporated associations, on application duly made therefor for the manufacture or sale of cigarettes within the District of Columbia. The designated District agency shall keep a full and complete record of all applications for licenses and of action taken thereon. (May 27, 1949, 63 Stat. 138, ch. 146, title VI, § 605.)

EFFECTIVE DATE

Section effective on the first day of the first month succeeding the sixtieth day after May 27, 1949, see note under § 47–2801.

§ 47–2805. Types of licenses.

Licenses shall be of three kinds, namely:

A. RETAILER'S LICENSE.—Such a license shall authorize the holder thereof to keep for sale and to sell cigarettes to consumers, from the place therein designated and to deliver such cigarettes to consumers in original packages: *Provided,* That cigarettes may be sold in number less than the number contained in the original package if such sales be permitted by regulations approved by the Commissioners. A separate license shall be required for each such place or establishment. Such a license shall not authorize the licensee to sell to other licensees for resale.

The annual fee for such license shall be fixed by the Commissioners at a rate not to exceed $5 for each retail establishment.

B. VENDING MACHINE OPERATOR'S LICENSE.—Such a license shall authorize the holder thereof to sell or offer to sell cigarettes from or by means of vending machines located in the place or places described therein. The Commissioners may by regulation require that a separate license be obtained for each machine or may permit a blanket license for one or more machines and may also prescribe that evidence of licensing of such machines be attached to each such machine by means of markers, stickers, or otherwise. The annual fee for such a license shall be fixed by the Commissioners at a rate not to exceed $5 for each and every such machine.

C. WHOLESALER'S LICENSE.—(1) Such a license shall authorize the holder thereof to manufacture or to purchase or otherwise to acquire and to sell cigarettes in original packages to any person holding a license under this chapter as wholesaler, retailer, or vending-machine operator, or to consumers.

(2) Such a licensee may at his election purchase from the Collector of Taxes and affix to original packages stamps denoting payment of the tax imposed by this chapter and, upon delivery to a vendee licensed under this chapter, of such original packages with such stamps properly affixed may add to the selling price of such cigarettes an amount equal to the face value of such stamps and collect such amount from such vendee. If a wholesaler licensed hereunder shall sell cigarettes to consumers, it shall be the duty of such wholesaler prior to the sale and delivery of such cigarettes to affix to the original packages the stamp or stamps denoting the payment of the tax imposed by this chapter.

(3) A license as wholesaler shall authorize the holder thereof to manufacture at and to sell cigarettes from the place or places in the District therein designated. The Commissioners are empowered in their discretion to authorize, by regulation and upon such terms and conditions as they may require, the issuance of such a license for a place outside the District. A separate license shall be required for each such place within or without the District.

The annual fee for each such license shall be fixed by the Commissioners at a rate not to exceed $50. (May 27, 1949, 63 Stat. 138, ch. 146, title VI, § 606.)

EFFECTIVE DATE

Section effective on the first day of the first month succeeding the sixtieth day after May 27, 1949, see note under § 47–2801.

§ 47–2806. Period of licenses—Suspensions and revocations.

Licenses issued under authority of this chapter shall remain in effect for periods as may be fixed by

regulation approved by the Commissioners, not exceeding one year from the effective date of such licenses or unless revoked prior to their expiration.

Licenses issued under this chapter may be suspended or revoked for any violation of this chapter or the regulations issued thereunder, by the Commissioners or by a designated District agency, after hearing held by a designated District agency. (May 27, 1949, 63 Stat. 139, ch. 146, title VI, § 607.)

EFFECTIVE DATE

Section effective on the first day of the first month succeeding the sixtieth day after May 27, 1949, see note under § 47–2801.

§ 47–2807. Tax to be in addition to other taxes.

The taxes imposed and the licenses required by this chapter shall be in addition to the taxes imposed and the licenses required by any other Act. (May 27, 1949, 63 Stat. 139, ch. 146, title VI, § 608.)

EFFECTIVE DATE

Section effective on the first day of the first month succeeding the sixtieth day after May 27, 1949, see note under § 47–2801.

§ 47–2808. Administration—Rules and regulations.

This chapter shall be administered by designated District agencies except where specific duties are imposed upon specific officers by the terms hereof. The Commissioners are authorized to make rules and regulations to carry out the provisions of this chapter. (May 27, 1949, 63 Stat. 139, ch. 146, title VI, § 609.)

EFFECTIVE DATE

Section effective on the first day of the first month succeeding the sixtieth day after May 27, 1949, see note under § 47–2801.

§ 47–2809. Personnel and expenses authorized.

The Commissioners are authorized to employ personal services in accordance with section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters], and to incur such other expenses as may be necessary to carry out the provisions of this chapter and to include such amounts in their annual estimates. (May 27, 1949, 63 Stat. 139, ch. 146, title VI, § 610; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106 (a).)

CODIFICATION

The reference in this section to "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENT

1949—Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

EFFECTIVE DATE

Section effective on the first day of the first month succeeding the sixtieth day after May 27, 1949, see note under § 47–2801.

§ 47–2810. Violations—Penalties—Prosecutions.

Whoever violates any provision of this chapter for which no specific penalty is provided, or any of the rules and regulations promulgated under the authority of this chapter, shall be punished by a fine of not more than $1,000 or by imprisonment for not longer than one year, or by both such fine and imprisonment, in the discretion of the court. Prosecutions for violations of this chapter shall be on information filed in the District of Columbia Court of General Sessions by the Corporation Counsel or any of his Assistants, except for such violations as are felonies, and prosecutions for such violations as are felonies shall be by the United States Attorney in and for the District of Columbia, or any of his Assistants. (May 27, 1949, 63 Stat. 139, ch. 146, title VI, § 611; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

EFFECTIVE DATE

Section effective on the first day of the first month succeeding the sixtieth day after May 27, 1949, see note under § 47–2801.

§ 47–2811. Redemption of cigarette or alcoholic-beverage tax stamps.

(a) Where any cigarette or alcoholic-beverage tax stamps issued under District of Columbia tax laws have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, the amount paid for such stamps may be refunded within the limit of appropriations therefor, or allowed as a credit on the purchase of new stamps. No such refund or allowance shall be made unless the owner of such stamps shall file a written claim therefor with the Commissioners of the District of Columbia or their designated agent within the time prescribed in this section and unless the Commissioners or their designated agent upon receipt of satisfactory evidence of the facts, and subject to regulations prescribed by the Commissioners, certify that such refund or allowance is just and equitable.

(b) No refund or allowance shall be made in any case (1) until the stamps so spoiled or rendered useless shall have been returned to the Commissioners or their designated agent, or (2) until satisfactory proof has been made to the Commissioners or their designated agent showing the reason why the same cannot be returned, or (3), if so required by the Commissioners or their designated agent, unless the person presenting the same can satisfactorily trace the history of said stamps from their issuance to the filing of his claim as aforesaid: *Provided,* That no refund shall be made in those cases where the owner may be made whole by allowing him a credit on the purchase of new stamps: *And provided further,* That no claim for a refund, or allowance for such stamps, shall be allowed unless presented within six months after the stamps have been spoiled,

destroyed, or rendered useless or unfit for the purpose intended, or, in the case of stamps for which the owner may have no use, within six months from the date of purchase thereof, except that as to stamps which have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, prior to June 3, 1954, a claim for a refund or allowance for credit may be filed within six months after June 3, 1954. (June 3, 1954, 68 Stat. 169, ch. 252, §§ 1, 2.)

CODIFICATION

Subsecs. (a) and (b) of this section comprise, respectively, sections 1 and 2 of act June 3, 1954.

Section was not enacted as part of the District of Columbia Cigarette Tax Act which is classified to this chapter.

CROSS REFERENCE

Beverage tax stamps, see § 25–124.

Chapter 29.—ADMISSION TO LICENSED PLACES–POSTING OF PRICE SCALE

Sec.

47–2901. Distinction because of race or color unlawful in licensed places of amusement—Payment of admissions—Penalty.
47–2902. Licensed hotels, restaurants and like establishments may not refuse admittance and service to orderly persons or exclude them because of race or color—Penalty.
47–2903. Increase of penalty provisions in section 47–2901.
47–2904. Recovery of fine—Payment of moiety.
47–2905. Posting of price scale.
47–2906. Failure to post price scale—Penalty.
47–2907. Keepers or proprietors of restaurants, hotels, barber shops, bathing houses, ice-cream saloons, and soda fountains required to serve well-behaved persons.
47–2908. Proprietors or keepers of licensed restaurants, eating-houses, bar-rooms, sample-rooms, ice-cream saloons, or soda fountains required to post price list.
47–2909. Transmittal of price list to Assessor.
47–2910. Proprietors or keepers of licensed restaurants, eating-houses, bar-rooms, sample-rooms, ice-cream saloons, or soda fountains required to serve well-behaved persons at common prices.
47–2911. Failure to post or file price list—Charging other or greater price—Failure to serve any well-behaved person—Penalty—Enforcement.

§ 47–2901. Distinction because of race or color unlawful in licensed places of amusement—Payment of admissions—Penalty.

It shall not be lawful for any person or persons who shall have obtained a license from this Corporation for the purpose of giving a lecture, concert, exhibition, circus performance, theatrical entertainment, or for conducting a place of public amusement of any kind, to make any distinction on account of race or color, as regards the admission of persons to any part of the hall or audience-room where such lecture, concert, exhibition, or other entertainment may be given: *Provided,* That any person applying shall pay the regular price charged for admission to such part of the house as he or she may wish to occupy, and shall conduct himself or herself in an orderly and peaceable manner, while on the premises; and any person or persons offending herein shall forfeit and pay to this Corporation for each offense a fine of not less than ten nor more than twenty dollars to be collected and applied as are other fines. That all acts or parts of acts inconsistent with this section be, and the same are hereby repealed. (June 10, 1869, ch. 36, p. 22, Corp. Laws of Wash., 66th Council, §§ 1, 2.)

INCREASE OF PENALTY

Section 3 of act Mar. 7, 1870, classified to section 47–2903, increased the penalty provided in this section to a minimum of $50.

EXTENSION OF AREA OF APPLICABILITY

Order No. 56–874, dated May 3, 1956, issued by Commissioners of the District of Columbia, extended the area of applicability of this section to make it apply in the District of Columbia outside the limits of the city of Washington.

NOTES TO DECISIONS

Civil action

The District of Columbia antidiscrimination laws are municipal ordinances or police regulations, penal in character, and do not give rise to a civil action for damages. *Tynes* v. *Gogos* (D. C. Mun. App. 1958, 144 A. 2d 412).

A white woman who, with her husband who was a member of Negro race, entered a restaurant and dance hall, when entering the area of restaurant reserved for dancing, was ordered to stop because "mixed dancing" was not permitted, could not maintain an action for humiliation, embarrassment, anguish and anxiety under so-called "anti-discrimination laws" effective in District of Columbia regulating restaurants, etc. *Id.*

Constitutionality

Fact that this section adopted by corporation of city of Washington prohibiting persons who have obtained license for conducting place of public amusement of any kind from making any distinction on account of race or color was applicable only to that part of the District of Columbia formerly included in the cities of Washington and Georgetown, did not render the section invalid as violation of due process. *Central Amusement Co., Inc.* v. *District of Columbia* (D.C. Mun. App. 1956, 121 A. 2d 865).

Definition of person

The word "persons", as used in this section prohibiting persons who have obtained license for purpose of giving a lecture, concert, exhibition, circus performance, theatrical performance, or for conducting place of public amusement of any kind, from making any distinction on account of race or color, applies to corporations as well as natural persons. *Central Amusement Co., Inc.* v. *District of Columbia* (D.C. Mun. App. 1956, 121 A. 2d 865).

Place of public amusement

A bowling alley was a place of "public amusement" within this section prohibiting persons who have obtained license for purpose of giving a lecture, concert, exhibition, circus performance, theatrical performance, or for conducting place of public amusement of any kind from making any distinction on account of race or color. *Central Amusement Co., Inc.* v. *District of Columbia* (D.C. Mun. App. 1956, 121 A. 2d 865).

§ 47–2902. Licensed hotels, restaurants and like establishments may not refuse admittance and service to orderly persons or exclude them because of race or color—Penalty.

(a) It shall not be lawful for the keeper, proprietor, or proprietors of any licensed hotel, tavern, restaurant, ordinary, sample-room, tippling-house, saloon, or eating-house, to refuse to receive, admit, entertain, and supply any quiet and orderly person or persons, or to exclude any person or persons on account of race or color.

(b) If the keeper, proprietor, or proprietors of any licensed hotel, tavern, restaurant, ordinary, sample-room, tippling-house, saloon, or eating-house, or any agent acting for him or them, shall violate or offend against the provisions of sections 47–2902 to 47–2904, he or they shall be subject to a fine of not less than fifty dollars for each violation thereof, to be recovered in an action of debt, in the name of the Mayor, Board of Alderman, and Board

of Common Council of the city, on information filed before any police magistrate. (Mar. 7, 1870, ch. 42, p. 22, Corp. Laws of Wash., 67th Council, §§ 1, 2.)

NOTES TO DECISIONS

Civil action

The District of Columbia antidiscrimination laws are municipal ordinances or police regulations, penal in character, and do not give rise to a civil action for damages. *Tynes* v. *Gogos* (D.C. Mun. App. 1958, 144 A. 2d 412).

A white woman who, with her husband who was a member of Negro race, entered a restaurant and dance hall, when entering the area of restaurant reserved for dancing, was ordered to stop because "mixed dancing" was not permitted, could not maintain an action for humiliation, embarrassment, anguish and anxiety under so-called "anti-discrimination laws" effective in District of Columbia regulating restaurants, etc. *Id.*

§ 47–2903. Increase of penalty provisions in section 47–2901.

In lieu of the penalties provided in section 47–2901 for the offense therein mentioned, the penalty mentioned in section 47–2902 (b) is hereby substituted, and hereafter shall be applicable to and enforced, as herein provided, for any violation of section 47–2901. (Mar. 7, 1870, ch. 42, p. 22, Corp. Laws of Wash., 67th Council, § 3.)

§ 47–2904. Recovery of fine—Payment of moiety.

After the final conviction of any party for the violation of any of the provisions of sections 47–2901 to 47–2903, and the recovery of the fine, a sum equal in amount to one-half of such fine shall be paid, and warrant drawn in the usual form out of the general fund, to the party who may have been the informer in any such case. That all acts or parts of acts that are inconsistent with the provisions of sections 47–2902 to 47–2904 are hereby repealed. (Mar. 7, 1870, ch. 42, p. 22, Corp. Laws of Wash., 67th Council, §§ 4, 5.)

§ 47–2905. Posting of price scale.

Keepers or owners of restaurants, eating-houses, bar-rooms, or ice-cream saloons, or soda-fountains, at which food, refreshments or drinks are sold, or keepers of barber shops and bathing houses, must put in a conspicuous place in their restaurant, eating-houses, ice-cream saloons, or places for the sale of soda water, a scale of the prices for which the different articles they have for sale will be furnished. (Leg. Assem., June 20, 1872, § 1.)

PARTIAL REPEAL

The United States Court of Appeals for the District of Columbia, in *John R. Thompson Co., Inc.* v. *District of Columbia* (1954, 93 U. S. App. D. C. 373, 214 F. 2d 210) held that the 1873 act of the Legislative Assembly of District of Columbia, classified to sections 47–2908 to 47–2911 repealed the act of 1872, classified to this section and sections 47–2906 and 47–2907, with respect to restaurants.

NOTES TO DECISIONS

Authority to legislate

"Rightful subjects of legislation" within District of Columbia Organic Act of 1871 extending with certain exceptions the legislative power of District to all rightful subjects of legislation within District consistent with Federal Constitution and provisions of Organic Act is as broad as police power of state so as to include a law prohibiting discriminations against Negroes by owners and managers of restaurants in District of Columbia. *District of Columbia* v. *John R. Thompson Co.* (1953, 73 S. Ct. 1007, 346 U. S. 100, 97 L. Ed. 1480).

Repeal

The 1872 and 1873 antidiscrimination laws, sections 47–2905 to 47–2911, governing restaurants in District of Columbia are police regulations" and "acts relating to municipal affairs" within District of Columbia Code of 1901 saving such regulations and acts from repeal. *District of Columbia* v. *John R. Thompson Co.* (1953, 73 S. Ct. 1007, 346 U. S. 100, 97 L. Ed. 1480).

The 1874 Act abolishing Legislative Assembly of District of Columbia and the 1878 Organic Act precluded repeal of 1872 and 1873 antidiscrimination laws of Legislative Assembly sections 47–2905 to 47–2911, except by Act of Congress. *Id.*

Sections 47–2908 to 47–2911 making it unlawful for restaurateurs to discriminate against or refuse to serve any well-behaved and respectable person repeals this section and sections 47–2906, 47–2907, insofar as they apply to restaurants in District of Columbia. *John R. Thompson Co., Inc.* v. *District of Columbia* (1954, 214 F. 2d 210, 93 U. S. App. D. C. 373).

§ 47–2906. Failure to post price scale—Penalty.

Persons violating the provisions of section 47–2905 are to be deemed guilty of misdemeanor, and, upon conviction in a court having jurisdiction, are to be fined by the court not less than twenty dollars, and not more than fifty dollars. (Leg. Assem. June 20, 1872, § 2.)

PARTIAL REPEAL

The United States Court of Appeals for the District of Columbia, in *John R. Thompson Co., Inc.*, v. *District of Columbia* (1954, 93 U. S. App. D. C. 373, 214 F. 2d 210) held that the 1873 act of the Legislative Assembly of District of Columbia, classified to sections 47–2908 to 47–2911, repealed the act of 1872, classified to this section and sections 47–2905, 47–2907 respect to restaurants.

NOTES TO DECISIONS

Repeal

Sections 47–2908 to 47–2911 making it unlawful for restaurateurs to discriminate against or refuse to serve any well-behaved and respectable person repeals this section and sections 47–2905, 47–2907, insofar as they applied to restaurants in District of Columbia. *John R. Thompson Co., Inc.* v. *District of Columbia* (1954, 214 F. 2d 210, 93 U. S. App. D. C. 373).

§ 47–2907. Keepers or proprietors of restaurants, hotels, barber shops, bathing houses, ice-cream saloons, and soda fountains required to serve well-behaved persons.

Any restaurant keeper or proprietor, any hotel keeper or proprietor, proprietors or keepers of ice-cream saloons or places where soda-water is kept for sale, or keepers of barber shops and bathing houses, refusing to sell or wait upon any respectable well-behaved person, without regard to race, color, or previous condition of servitude, or any restaurant, hotel, ice-cream saloon or soda fountain, barber shop or bathing-house keepers, or proprietors, who refuse under any pretext to serve any well-behaved, respectable person, in the same room, and at the same prices as other well-behaved and respectable persons are served, shall be deemed guilty of a misdemeanor, and upon conviction in a court having jurisdiction, shall be fined one hundred dollars, and shall forfeit his or her license as keeper or owner of a restaurant, hotel, ice-cream saloon, or soda fountain, as the case may be, and it shall not be lawful for the *Assessor* [Register] or any officer of the District of Columbia to issue a license to any person or persons, or to their agent or agents, who shall have forfeited their license under the provisions of sections 47–2905 to 47–2907, until a period of one

year shall have elapsed after such forfeiture. (Leg. Assem., June 20, 1872, § 3.)

PARTIAL REPEAL

The United States Court of Appeals for the District of Columbia, in *John R. Thompson Co., Inc.* v. *District of Columbia* (1954, 93 U. S. App. D. C. 373, 214 F. 2d 210) held that the 1873 act of the Legislative Assembly of District of Columbia, classified to sections 47–2908 to 47–2911, repealed the act of 1872 classified to sections 47–2905 to 47–2907, with respect to restaurants.

NOTES TO DECISIONS

Civil action

The District of Columbia antidiscrimination laws are municipal ordinances or police regulations, penal in character, and do not give rise to a civil action for damages. *Tynes* v. *Gogos* (D.C. Mun. App. 1958, 144 A. 2d 412).

A white woman who, with her husband who was a member of Negro race, entered a restaurant and dance hall, when entering the area of restaurant reserved for dancing, was ordered to stop because "mixed dancing" was not permitted, could not maintain an action for humiliation, embarrassment, anguish and anxiety under so-called "anti-discrimination laws" effective in District of Columbia regulating restaurants, etc. *Id.*

Repeal

Sections 47–2908 to 47–2911, making it unlawful for restaurateurs to discriminate against or refuse to serve any well-behaved and respectable person repeals sections 47–2905 to 47–2907, insofar as they applied to restaurants in District of Columbia. *John R. Thompson Co., Inc.* v. *District of Columbia* (1954, 214 F. 2d 210, 93 U. S. App. D. C. 373).

§ 47–2908. Proprietors or keepers of licensed restaurants, eating-houses, bar-rooms, sample-rooms, ice-cream saloons, or soda fountains required to post price list.

The proprietor or proprietors, or keeper or keepers, of every licensed restaurant, eating-house, bar-room, sample-room, ice-cream saloon, or soda-fountain room, or establishment in the District of Columbia, shall put up, or cause to be kept up, and to be regularly kept up, or cause to be kept up, in two conspicuous places in the chief room or rooms of his, her, or their restaurant, eating-house, bar-room, ice-cream saloon, or soda-fountain room, and in one conspicuous place in each small or private room, if any, used in connection with said restaurant, eating-house, bar-room, sample-room, ice-cream saloon, and soda-fountain room, for the accommodation of guests, visitors, or customers thereat, printed cards, or papers, on which shall be distinctly printed the common or usual price for which each article or thing kept in any of said places or establishments to be eaten or drank therein is or may be commonly sold, or the price or prices for which the articles or things are or may be commonly or usually furnished to persons calling for, desiring, or receiving the same or any part or parts thereof, and no greater price or prices than those mentioned or contained on said cards or printed papers shall be asked for, demanded, or received from any person or persons for any of the articles or things kept in any manner for sale in any of the places or establishments aforesaid, either by said proprietor or proprietors, keeper or keepers, or by their agents, employes, or any one acting in any manner for them. (3 Leg. Assem., June 26, 1873, ch. 46, § 1.)

NOTES TO DECISIONS

Construction

Sections 47–2908 to 47–2911 making it a misdemeanor for restaurant proprietors and proprietors of similar establishments to refuse to serve any well-behaved, respectable person without regard to race or color, was not repealed by any act of Congress. *District of Columbia* v. *John R. Thompson Co., Inc.* (D.C. Mun. App. 1951, 81 A. 2d 249).

Repeal

The District of Columbia Code of 1901 repealing general and permanent acts of Legislative Assembly of District of Columbia used words "general and private acts" as contrasted to statutes which are private, special or temporary. *District of Columbia* v. *John R. Thompson Co.* (1953, 73 S. Ct. 1007, 346 U. S. 100, 97 L. Ed. 1480).

§ 47–2909. Transmittal of price list to Assessor.

On or before the first day of November in each year the proprietor or proprietors, keeper or keepers, of each licensed restaurant, eating-house, bar-room, sample-room, ice-cream saloon, and soda-fountain room or establishment in said District, as aforesaid, shall transmit to the Assessor [Register] of said District a printed copy of the usual or common price or prices of articles or things kept for sale by him, her, or them, as aforesaid, which shall be filed by the *Assessor* [Register] in his office, and unless he is notified of changes therein, the copy transmitted and filed in said office may be used in any case or proceeding under sections 47–2909 to 47–2911 as prima facie evidence of the common or usual prices charged for the articles or things mentioned therein by the proprietor or proprietors, keeper or keepers, of any of the places or establishments aforesaid, and in a failure of any proprietor or proprietors, keeper or keepers, to transmit the copy aforesaid, the Assessor [Register] shall notify such person of such failure, and require such copy to be forthwith transmitted to him. (3 Leg. Assem., June 26, 1873, ch. 46, § 2.)

§ 47–2910. Proprietors or keepers of licensed restaurants, eating-houses, bar-rooms, sample-rooms, ice-cream saloons, or soda fountains required to serve well-behaved persons at common prices.

The proprietor or proprietors, keeper or keepers, of any licensed restaurant, eating-house, bar-room, sample-room, ice-cream saloon, or soda-fountain room shall sell at and for the usual or common prices charged by him, her, or them, as contained in said printed cards or papers, any article or thing kept for sale by him, her, or them to any well-behaved and respectable person or persons who may desire the same, or any part or parts thereof, and serve the same to such person or persons in the same room or rooms in which any other well-behaved person or persons may be served or allowed to eat or drink in said place or establishment: *Provided,* That persons of different sexes shall not be accommodated in the same room or rooms unless they accompany each other, or call for any articles or things together, or unless said room or rooms are ordinarily used indiscriminately by persons of both sexes. (3 Leg. Assem., June 26, 1873, ch. 46, § 3.)

NOTES TO DECISIONS

Civil action

The District of Columbia antidiscrimination laws are municipal ordinances or police regulations, penal in character, and do not give rise to a civil action for damages. *Tynes* v. *Gogos* (D.C. Mun. App. 1958, 144 A. 2d 412).

A white woman who, with her husband who was a member of Negro race, entered a restaurant and dance hall, when entering the area of restaurant reserved for dancing, was ordered to stop because "mixed dancing" was not permitted, could not maintain an action for humiliation, embarrassment, anguish and anxiety under so-called "anti-discrimination laws" effective in District of Columbia regulating restaurants, etc. *Id.*

Construction

Sections 47–2908 to 47–2911 making it a crime for restaurateurs and others to discriminate against person or to refuse to serve him on account of race or color have survived all subsequent changes in Government of District and remain a part of governing body of laws applicable to District. *District of Columbia* v. *John R. Thompson Co.* (1953, 73 S. Ct. 1007, 346 U.S. 100, 97 L. Ed. 1480).

§ 47–2911. Failure to post or file price list—Charging other or greater price—Failure to serve any well-behaved person—Penalty—Enforcement.

If the proprietor or proprietors, keeper or keepers, of any place or establishment, as aforesaid, shall neglect or refuse to put up printed cards or papers of prices as provided for in section 47–2908, or shall refuse to send a copy or duplicate to the Assessor [Register,] as provided in section 47–2909 or shall place or cause to be placed on said card or paper, or permit to be placed thereon any price or prices other or greater than that for which any article or thing is, or may be, usually and commonly sold or furnished by him, her, or them, or different from or more than is usually or commonly demanded or received therefor by him, her or them, or by his, her, or their authority or direction, or shall demand or receive in any manner, or under any circumstances, or for any reason or pretence, in person or by any employee or agent, from any person or persons aforesaid, any sum or prices different or greater than is contained on said cards or papers, or than is usually and commonly asked or received for any article or thing kept for sale as aforesaid, or shall refuse or neglect, in person or by his, her, or their employee or agent, directly or indirectly, to accommodate any well-behaved and respectable person as aforesaid in his, her, or their restaurant, eating-house, bar-room, sample-room, ice-cream saloon, or soda-fountain room, or shall refuse or neglect to sell at the common and usual prices aforesaid in and at his, her, or their restaurant, eating-house, bar-room, sample-room, ice-cream saloon, or soda-fountain room, to any such person or persons therein at said prices, any article or thing kept therein and in the room or rooms in which such articles or things are ordinarily sold and served or allowed to be eaten or drank, or shall at any time or in any way or manner, or under any circumstances, or for any reason, cause, or pretext, fail, decline, object, or refuse to treat any person or persons aforesaid as any other well-behaved and respectable person or persons are treated at said restaurant, eating-house, bar-room, sample-room, ice-cream saloon, or soda-fountain room, he, she, or they, on conviction of a disregard or violation of any provision, regulation, or requirement of sections 47–2908, 47–2909, 47–2910, and 47–2911 or any part of sections 47–2908, 47–2909, 47–2910, and 47–2911 contained, be fined one hundred dollars, and forfeit his, her, or their license; and it shall not be lawful for any officer of the District to issue a license to any person or persons, or their agent or agents, whose license may be forfeited under the provisions of sections 47–2908, 47–2909, 47–2910, and 47–2911 for one year after such forfeiture: *Provided,* That the provisions of sections 47–2908, 47–2909, 47–2910, and 47–2911 shall be enforced by information in the District of Columbia Court of General Sessions, filed on behalf thereof by its proper attorney or attorneys, subject to appeal to the District of Columbia Court of Appeals in the same manner as is now or may be hereafter provided for the enforcement of the District fines and penalties under ordinances and law. (3 Leg. Assem., June 26, 1873, ch. 46, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CODIFICATION

The "District of Columbia Court of Appeals" was substituted for "Criminal Court of the District of Columbia", the latter being an obsolete term. See revision note under § 11–502, relating to the United States District Court for the District of Columbia. The "Criminal Court of the District of Columbia", the term used in this section at the time of its enactment, was then a "special term" of the Supreme Court of the District of Columbia, now the District Court. The District of Columbia Court of Appeals, established as the "Municipal Court of Appeals for the District of Columbia" by act Apr. 1, 1942, 56 Stat. 194, ch. 207, § 6, now has jurisdiction of appeals from orders and judgments of the District of Columbia Court of General Sessions (see change of name note below), referred to in this section. See § 11–741.

CHANGE OF NAME

The police court of the District of Columbia and the Municipal Court of the District of Columbia were consolidated by act Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1, into one court to be known as the "Municipal Court for the District of Columbia."

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

NOTES TO DECISIONS

Civil action

The District of Columbia antidiscrimination laws are municipal ordinances or police regulations, penal in character, and do not give rise to a civil action for damages. *Tynes* v. *Gogos* (D.C. Mun. App. 1958, 144 A. 2d 412).

A white woman who, with her husband who was a member of Negro race, entered a restaurant and dance hall, when entering the area of a restaurant reserved for dancing, was ordered to stop because "mixed dancing" was not permitted, could not maintain an action for humiliation, embarrassment, anguish and anxiety under so-called "anti-discrimination laws" effective in District of Columbia regulating restaurants, etc. *Id.*

Construction

Sections 47–2908 to 47–2911 prescribing in terms of civil rights the duties of restaurateurs to members of public has not been modified, altered or repealed by non-use and administrative practice and by exercise for 75 years of licensing authority over restaurants without regard to equal service requirements. *District of Columbia* v. *John R. Thompson Co.* (1953, 73 S. Ct. 1007, 346 U.S. 100, 97 L. Ed 1480).

Repeal

Sections 47–2908 to 47–2911 making it a misdemeanor for restaurant proprietors and proprietors of similar establishments to refuse to serve any well-behaved respectable person without regard to race or color, were not repealed by any act of Congress. *District of Columbia* v. *John R. Thompson Co., Inc.* (D.C. Mun. App. 1951, 81 A. 2d 249).

Chapter 30.—CLOSING-OUT SALES

Sec.
47–3001. "Closing-out sales" defined.
47–3002. Closing-out sales prohibited without a license—Application for license to be in writing—License fee—Bond—Records—Penalty.

Sec.
47–3003. Purchase of new stocks for use on "closing-out sales" prohibited—Presumptions.
47–3004. Addition of new stocks during "closing-out sales" prohibited.
47–3005. Continuation of sale beyond termination date prohibited—Extension of termination date—Continuation of business at new location prohibited.
47–3006. Penalty for conducting false "closing-out sales" and for violation of this chapter—Corporation counsel to conduct prosecutions.
47–3007. Provisions of chapter not applicable to public officials.
47–3008. Jurisdiction of District Court to enjoin violations of the provisions of this chapter.
47–3009. Regulations.
47–3010. Commissioners authority not affected by provisions of this chapter—Delegation of authority.

§ 47–3001. "Closing-out sales" defined.

For the purposes of this chapter, (1) "closing-out sale" shall mean and include any sale in connection with which there is any representation by the person conducting such sale that the sale is being conducted, or is required or compelled to be conducted, for reasons of economic or business distress, inability to continue business at the same location, or the age or health of the owner or owners of the business, and the term "closing-out sale" shall include but not be limited to, all sales advertised, represented, or held forth under the designation of "going out of business," "discontinuance of business," "selling out," "liquidation" "lost our lease," "must vacate," "forced out," "removal," or any other designation of like meaning; and (2) "person" shall mean and include individuals, partnerships, voluntary associations, and corporations. (Sept. 1, 1959, 73 Stat. 449, Pub. L. 86–219, § 1.)

EFFECTIVE DATE

Section 10 of act Sept. 1, 1959, provided that: "This Act [this chapter] shall become effective sixty days after the date of its enactment [Sept. 1, 1959]."

§ 47–3002. Closing-out sales prohibited without a license—Application for license to be in writing—License fee—Bond—Records—Penalty.

(a) No person shall advertise or offer for sale in the District of Columbia a stock of goods, wares, or merchandise under the description of closing-out sale, or a sale of goods, wares, or merchandise damaged by fire, smoke, water, or otherwise, unless he shall have obtained a license to conduct such sale from the Commissioners of the District of Columbia. The applicant for such a license shall make an application therefor, in writing and under oath at least 14 days prior to the opening date of sale, showing all the facts relating to the reasons and character of such sale, including the opening and terminating dates of the proposed sale, a complete inventory of the goods, wares, or merchandise actually on hand in the place whereat such sale is to be conducted, and all details necessary to locate exactly and identify fully the goods, wares, or merchandise to be sold.

(b) If the Commissioners shall be satisfied from said application that the proposed sale is of the character which the applicant desires to advertise and conduct, the Commissioners shall issue a license, upon the payment of a fee of $100 therefor, together with a bond, payable to the District of Columbia in the penal sum of $1,000, conditioned upon compliance with this chapter, to the applicant authorizing him to advertise and conduct a sale of the particular kind mentioned in the application. Any merchant who shall have been conducting a business in the same location where the sale is to be held for a period of not less than one year, prior to the date of holding such sale shall be exempted from the payment of the fee and the filing of the bond herein provided.

(c) The Commissioners shall endorse upon such application the date of its filing, and shall preserve the same as a record of office, and shall make an abstract of the facts set forth in such application, and shall indicate whether the license was granted or refused.

(d) Any person making a false statement in the application provided for in this section shall, upon conviction, be deemed guilty of perjury. (Sept. 1, 1959. 73 Stat. 449. Pub. L. 86–219. § 2.)

EFFECTIVE DATE

Section effective 60 days after Sept. 1, 1959, see note under § 47–3001.

§ 47–3003. Purchase of new stocks for use on "closing-out sales" prohibited—Presumptions.

No person in contemplation of a closing-out sale under a license as provided for in section 47–3002 shall order any goods, wares, or merchandise for the purpose of selling and disposing of the same at such sale, and any unusual purchase and additions to the stock of such goods, wares, or merchandise within 60 days prior to the filing of application for a license to conduct such sale shall be presumptive evidence that such purchases and additions to stock were made in contemplation of such sale. (Sept. 1, 1959, 73 Stat. 450, Pub. L. 86–219, § 3.)

EFFECTIVE DATE

Section effective 60 days after Sept. 1, 1959, see note under § 47–3001.

§ 47–3004. Addition of new stocks during "closing-out sales" prohibited.

No person carrying on or conducting a closing-out sale or a sale of goods, wares, or merchandise damaged by fire, smoke, water, or otherwise, under a license as provided in section 47–3002 shall, during the continuance of such sale, add any goods, wares, or merchandise to the stock inventoried in his original application for such license, and no goods, wares, or merchandise shall be sold at or during such sale, excepting the goods, wares, or merchandise described and inventoried in such original application. (Sept. 1, 1959, 73 Stat. 450, Pub. L. 86–219, § 4.)

EFFECTIVE DATE

Section effective 60 days after Sept. 1, 1959, see note under § 47–3001.

§ 47–3005. Continuation of sale beyond termination date prohibited—Extension of termination date—Continuation of business at new location prohibited.

No person shall conduct a closing-out sale or a sale of goods, wares, or merchandise damaged by fire, smoke, water, or otherwise beyond the termination date specified for such sale, except that an extension may be authorized upon proper showing of need; nor shall any person, upon conclusion of

such sale, continue that business which had been represented as closing out or going out of business under the same name, or under a different name, at the same location, or elsewhere in the District of Columbia where the inventory for such sale was filed; nor shall any person, upon conclusion of such sale, continue business contrary to the designation of such sale. (Sept. 1, 1959, 73 Stat. 450, Pub. L. 86–219, § 5.)

EFFECTIVE DATE

Section effective 60 days after Sept. 1, 1959, see note under § 47–3001.

§ 47–3006. Penalty for conducting false "closing-out sales" and for violation of this chapter—Corporation counsel to conduct prosecutions.

(a) Any person who shall advertise, hold, conduct, or carry on any sale of goods, wares, or merchandise under the description of closing-out sale or a sale of goods, wares, or merchandise damaged by fire, smoke, water, or otherwise, contrary to the provision of this chapter, or who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than $300 or imprisonment for ninety days or both.

(b) Prosecutions for violations of this chapter and regulations promulgated under the authority of this chapter shall be conducted in the name of the District of Columbia by the Corporation Counsel or any of his assistants. (Sept. 1. 1959, 73 Stat. 450, Pub. L. 86–219, § 6.)

EFFECTIVE DATE

Section effective 60 days after Sept. 1, 1959, see note under § 47–3001.

§ 47–3007. Provisions of chapter not applicable to public officials.

The provisions of this chapter shall not apply to public or court officers, or to any other person or persons acting under the license, direction, or authority of any court, local or Federal, selling goods, wares, or merchandise in the course of their official duties. (Sept. 1, 1959, 73 Stat. 451, Pub. L. 86–219, § 7.)

EFFECTIVE DATE

Section effective 60 days after Sept. 1, 1959, see note under § 47–3001.

§ 47–3008. Jurisdiction of District Court to enjoin violations of the provisions of this chapter.

Upon complaint of any person, the United States District Court for the District of Columbia shall have jurisdiction in equity to restrain and enjoin any act forbidden or declared illegal by any provisions of this chapter. (Sept. 1, 1959, 73 Stat. 451, Pub. L. 86–219, § 8.)

EFFECTIVE DATE

Section effective 60 days after Sept. 1, 1959, see note under § 47–3001.

§ 47–3009. Regulations.

The Commissioners are authorized to promulgate regulations to carry out the purposes of this chapter including, without limitation, regulations limiting the period of time a closing-out sale or a sale of goods, wares, or merchandise damaged by fire, smoke, water, or otherwise may be conducted, subject to extension as authorized by section 47–3005: *Provided,* That no such regulation shall be put in effect until after a public hearing has been held thereon. (Sept. 1, 1959, 73 Stat. 451, Pub. L. 86–219, § 9.)

EFFECTIVE DATE

Section effective 60 days after Sept. 1, 1959, see note under § 47–3001.

§ 47–3010. Commissioners authority not affected by provisions of this chapter—Delegation of authority.

Nothing in this chapter shall be construed so as to affect the authority vested in the Commissioners by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824.) The performance of any function vested by this chapter in the Commissioners of the District of Columbia or in any office or agency under the jurisdiction and control of said Commissioner may be delegated by said Commissioners in accordance with section 3 of such plan. (Sept. 1, 1959, 73 Stat. 451, Pub. L. 86–219, § 11.)

REFERENCES IN TEXT

Reorganization Plan Numbered 5 of 1952 (66 Stat. 824), referred to in the text, is set out in the Appendix to Title 1, Administration.

EFFECTIVE DATE

Section effective 60 days after Sept. 1, 1959, see note under § 47–3001.

TITLE 48.—TRADE-MARKS AND TRADE NAMES

Chap. Sec.
1. Registration of Beverage Bottles..... 48–101
2. Registration of Milk Containers..... 48–201
3. Registration of Containers for Beverages Composed Principally of Milk..... 48–301
4. Registration of Labor Union Labels..... 48–401

Chapter 1.—REGISTRATION OF BEVERAGE BOTTLES

Sec.
48–101. Bottles of dealers in mineral waters may be registered.
48–102. Use or sale without owner's permission.

§ 48–101. Bottles of dealers in mineral waters may be registered.

All manufacturers and vendors of mineral waters and other beverages allowed by law to be sold in bottles, upon which their names or marks shall be respectively impressed, may file with the Recorder of Deeds of the District of Columbia a description of such bottles and of the names or marks thereon, and shall cause the same to be published for not less than two weeks successively in a daily or weekly newspaper published in the District. (Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 877; July 5, 1966, 80 Stat. 263, Pub. L. 89–493, § 6.)

AMENDMENT

1966—Section 6 of act July 5, 1966, substituted "Recorder of Deeds of" for "clerk of the United States District Court for".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1–504.

§ 48–102. Use or sale without owner's permission.

It shall be unlawful for any person, without the permission of the owner thereof, to fill with mineral waters or other beverages any such bottles so marked, for sale, or to traffic in any such bottles so marked and not bought by him of such owner; and every person so offending shall be liable to a penalty of fifty cents for every bottle so filled, or sold, or used, or disposed of, or bought, or trafficked in, for the first offense, and of five dollars for every subsequent offense, to be recovered as other fines are recovered in the District. (Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 878.)

CROSS REFERENCE

Criminal penalty for altering or imitating trade-mark or other label, see § 22–1402.

Chapter 2.—REGISTRATION OF MILK CONTAINERS

Sec.
48–201. Containers—Description may be filed with Recorder of Deeds.
48–202. Using registered container of another.
48–203. Wilfully defacing name registered by another.
48–204. Refusal to surrender to registrant a registered container prima facie evidence of unlawful use.
48–205. Proceeding in District of Columbia Court of General Sessions to ascertain violations—Search warrant.
48–206. Title to registered mark to be acquired only by written consent of registrant.
48–207. Rights of former registrants preserved.
48–208. "Person" defined.
48–209. Type of containers to which law is applicable.
48–210. Prosecutions—Penalties.
48–211. Injunctive relief.

§ 48–201. Containers—Description may be filed with Recorder of Deeds.

All persons, firms, partnerships, or corporations engaged in the bottling, selling, or distributing of milk or cream in bottles, cans, crates, or other containers within the District of Columbia, on which the name, trade-mark, or other device designating the owner is branded, blown, cut, carved, embossed, or impressed, may file with the Recorder of Deeds of the District of Columbia a description of the name or names, marks or devices so used by them, the said description to be a statement under oath by the owner of said name, mark, or device. The said owner of said name, mark, or device shall, after filing the description as above required, cause the same to be published at least once a week for two consecutive weeks in a newspaper of general circulation in the District of Columbia. The said owner of said name, mark, or device shall thereafter file with the Recorder of Deeds of the District of Columbia an affidavit made by himself or any other competent person stating that said description has been published as herein provided, and shall file in the office of the health department of the District of Columbia a copy of said registration and said affidavit of publication, both duly certified as true copies by the Recorder of Deeds of the District of Columbia. The registration of any such name, mark, or device shall be complete on the filing of said certified copies in the health office of the District of Columbia, and thereafter the name, mark, or device shall be considered as registered in accordance with sections 48–201 to 48–211, inclusive, and any bottle, can, crate, or other container on which said name, mark, or device shall be or shall be placed shall be considered as registered in accordance with sections 48–201 to 48–211, inclusive. (July 3, 1926, 44 Stat. 809, ch. 737, § 1; July 5, 1966, 80 Stat. 263, Pub. L. 89–493, § 7.)

AMENDMENT

1966—Act July 5, 1966, substituted "Recorder of Deeds of" for "clerk of the United States District Court for", wherever the latter term appeared.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in not under § 1–504.

CROSS REFERENCE

Milk containers, see §§ 10–114, 33–314.

§ 48–202. Using registered container of another.

Whoever shall by himself or his agent fill, use, sell, offer for sale, give, buy, traffic in, or shall have in his possession with intent to fill, use, sell, offer for sale, give, buy, or traffic in any registered milk bottle or bottles, can or cans, crate or crates, or other containers on which appears the name, mark, or device, registered by another person, shall be guilty of a misdemeanor, and upon conviction shall be subject to the penalties in section 48–210. (July 3, 1926, 44 Stat. 810, ch. 737, § 2.)

§ 48–203. Wilfully defacing name registered by another.

Whoever shall by himself or his agent willfully deface, erase, alter, obliterate, cover up, or otherwise remove or conceal any registered name, mark, or device registered by another and being on any milk bottle, can, crate, or other container, or shall willfully break, destroy, or otherwise injure any registered milk bottle, can, crate, or other container which has been registered by another shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties prescribed in section 48–210. (July 3, 1926, 44 Stat. 810, ch. 737, § 3.)

§ 48–204. Refusal to surrender to registrant a registered container prima facie evidence of unlawful use.

In any prosecution under sections 48–201 to 48–211, inclusive, the refusal of any person having possession of any registered milk bottle, can, crate, or other container to surrender possession of the same to the registrant of the name, mark, or device appearing thereon, after notice and demand by said registrant or his agent, shall be prima facie evidence of the unlawful use or traffic in the same contrary to the provisions of sections 48–201 to 48–211, inclusive. (July 3, 1926, 44 Stat. 810, ch. 737, § 4.)

§ 48–205. Proceeding in District of Columbia Court of General Sessions to ascertain violations—Search warrant.

Whenever any person who has registered milk bottles, cans, crates, or other containers in accordance with the provisions of section 48–201 shall by himself or his agent make oath before the clerk of the District of Columbia Court of General Sessions that he has reason to believe, and does believe, that any of his registered milk bottles, cans, crates, or other containers are being filled, used, bought, trafficked in, held, sold, offered for sale, broken, injured, or destroyed within the District of Columbia contrary to the provisions of sections 48–201 to 48–211, inclusive, by any person without the written consent of the registrant the judge of the District of Columbia Court of General Sessions to whom said complaint under oath is made may forthwith issue a search warrant directed to any police officer or other proper officer to search the premises whereon or wherein said registered milk bottles, cans, crates, or other containers are unlawfully held and may issue a warrant for the arrest of the person complained against; and if any one or more of such registered milk bottles, cans, crates, or other containers, or any parts of the same, shall be found upon the premises by the officer executing the said search warrant, he shall seize and take possession of all such registered milk bottles, cans, crates, or other containers, or parts thereof, and shall cause the same to be brought before the judge of the District of Columbia Court of General Sessions, who shall award the said registered milk bottles, cans, crates, and other containers to the person entitled to the same. (July 3, 1926, 44 Stat. 810, ch. 737, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

CROSS REFERENCE

Search warrants, see § 23–301 et seq.

§ 48–206. Title to registered mark to be acquired only by written consent of registrant.

No title may be acquired to any mark, name, or device, or any milk bottle, can, crate, or other container registered in accordance with sections 48–201 to 48–211 inclusive except by the consent in writing of the person who registered the same. (July 3, 1926, 44 Stat. 811, ch. 737, § 6.)

§ 48–207. Rights of former registrants preserved.

All persons who prior to July 3, 1926, registered any milk bottles, cans, crates, or other containers in accordance with the laws existing at the time of said registration shall be exempted from filing a new description in accordance with the terms of sections 48–201 to 48–211 inclusive, and shall be entitled to the rights and benefits accruing under sections 48–201 to 48–211 inclusive in the same manner as if said registration was made in accordance with sections 48–201 to 48–211 inclusive: *Provided*, That a copy of said registration duly certified by the clerk of the United States District Court for the District of Columbia was within thirty days from and after July 3, 1926, filed in the health office of the District of Columbia. (July 3, 1926, 44 Stat. 811, ch. 737, § 7; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 48–208. "Person" defined.

Whenever the word "person" is used in sections 48–201 to 48–211 inclusive, it shall apply equally as well to one or more persons, copartnerships, and corporations. (July 3, 1926, 44 Stat. 811, ch. 737, § 8.)

§ 48–209. Type of containers to which law is applicable.

The provisions of sections 48–201 to 48–211 inclusive, shall apply to all bottles, cans, crates, and other containers in which milk or cream of any grade, quality, or character is sold or offered for sale and shall include bottles, cans, crates, and other containers in which skimmed milk, buttermilk, double cream, and sour milk are sold. (July 3, 1926, 44 Stat. 811, ch. 737, § 9.)

§ 48–210. Prosecutions—Penalties.

The violation of any of the provisions of sections 48–201 to 48–211 inclusive, shall be a misdemeanor, and prosecutions for violations of sections 48–201 to 48–211 inclusive, shall be in the District of Columbia Court of General Sessions. Upon conviction of a violation of the provisions of sections 48–201 to 48–211 inclusive, the penalty shall be a fine of not more than $50 for the first offense and a fine of not more than $100 for the second and each subsequent offense. (July 3, 1926, 44 Stat. 811, ch. 737, § 10; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

CROSS REFERENCE

Criminal penalty for altering or imitating trade marks, see § 22–1402.

§ 48–211. Injunctive relief.

Whenever any person who has registered milk bottles, cans, crates, or other containers as herein provided shall have, upon complaint under oath, prosecuted any other person for violation of the provisions of sections 48–201 to 48–211 inclusive in the use, handling, holding, filling, selling, offering for sale, buying, trafficking in, breaking, or destroying of such registered milk bottles, cans, crates, or other containers and said other persons shall have been convicted on three occasions at least for the said unlawful use, handling, holding, filling, selling, offering for sale, buying, trafficking in, breaking, or destroying of said registered milk bottles, cans, crates, or other containers, then the said registrant of said milk bottles, cans, crates, or other containers shall be entitled, upon making complaint to a judge of the United States District Court for the District of Columbia, to have issued an injunction directed to said violator enjoining him from further illegal use, handling, holding, filling, selling, offering for sale, buying, trafficking in, breaking, or destroying of said registered milk bottles, cans, crates, or other containers. (July 3, 1926, 44 Stat. 811, ch. 737, § 11; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CODIFICATION

The phrase "holding an equity court", which followed "United States District Court for the District of Columbia", has been omitted as obsolete, as the District Court no longer has special terms known as "equity court", "circuit court", etc. See revision note under § 11–502.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia"; and "judge" for "justice."

Chapter 3.—REGISTRATION OF CONTAINERS FOR BEVERAGES COMPOSED PRINCIPALLY OF MILK

Sec.
48–301. Definitions.
48–302. Registration authorized—Publication.
48–303. Refilling and sale by others prohibited—Penalty.
48–304. Prima facie evidence of unlawful use.
48–305. District of Columbia Court of General Sessions to issue warrant on complaint of violation.
48–306. Regulations to be made by Recorder of Deeds.
48–307. Actions in tort permissible.

§ 48–301. Definitions.

The following words shall, in addition to their ordinary meaning, have the meaning herein given: The word "person" or "persons," in sections 48–302 to 48–305, 48–307 shall include "firms" or "corporations"; the word "vessel" or "vessels," in sections 48–302 to 48–305 shall include "cans," "bottles," "siphons," and "boxes"; the word "mark" or "marks" shall includes "labels," "trade-marks," and all other methods of distinguishing ownership in vessels, whether printed upon labels or blown into bottles or engraved and impressed upon cans or boxes. (Mar. 3, 1901, ch. 854, § 878a, as added Feb. 27, 1907, 34 Stat. 1006, ch. 2086.)

§ 48–302. Registration authorized—Publication.

Persons engaged in producing, manufacturing, bottling, or selling any lawful beverages composed principally of milk, in vessels, with their name, trade-mark, or other distinctive mark, and the word "registered" branded, engraved, blown, or otherwise produced thereon, or on which a paster trade-mark label is put upon which the word "registered" is also distinctly printed, may file with the Recorder of Deeds of the District of Columbia a description by facsimile, or a sample of an original package so marked or branded or blown, showing plainly such names and marks thereon, together with their name in full, or their corporate name, and also their place of business in the District of Columbia, and if so filed shall cause the same to be published for not less than two weeks successively in a daily or weekly

newspaper published in the District of Columbia. (Mar. 3, 1901, ch. 854, § 878b, as added Feb. 27, 1907, 34 Stat. 1006, ch. 2086, and amended June 25, 1936, 49 Stat. 1921, ch. 804; July 5, 1966, 80 Stat. 263, Pub. L. 89–493, § 6.)

AMENDMENT

1966—Section 6 of act July 5, 1966, substituted "Recorder of Deeds of" for "clerk of the United States District Court for".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1–504.

CROSS REFERENCE

Milk containers, generally, see §§ 10–114, 33–314, 48–201 et seq.

§ 48–303. Refilling and sale by others prohibited—Penalty.

Whoever, except the person who shall have filed and published a description of the same as aforesaid, fills with milk or cream, or other beverage, as aforesaid, with intent to sell the same, any vessel so marked and distinguished as aforesaid, the description of which shall have been filed and published as provided in section 48–302, or defaces, erases, covers up, or otherwise removes or conceals any such name or mark as aforesaid, or the word "registered," thereon, or sells, buys, gives, takes, or otherwise disposes of, or traffics in the same without having purchased the contents thereof from the person whose name is in or upon such vessel, or without the written consent of such person, shall, for the first offense, be punished by a fine of not less than fifty cents for each such vessel, or by imprisonment for not less than ten days nor more than one year, or by both such fine and imprisonment; and for each subsequent offense by a fine of not less than one nor more than five dollars for each such vessel, or by imprisonment for not less than twenty days nor more than one year, or by both such fine and imprisonment. (Mar. 3, 1901, ch. 854, § 878c, as added Feb. 27, 1907, 34 Stat. 1007, ch. 2086.)

CROSS REFERENCE

Criminal penalties for altering or imitating trade-marks, see § 22–1402.

§ 48–304. Prima facie evidence of unlawful use.

The use or possession by any person not engaged in the production or sale of beverage as aforesaid, except the person who shall so have filed and published a description of the same as aforesaid, of any vessel marked or distinguished as aforesaid, the description of which shall have been filed and published as aforesaid, without purchase of the contents thereof from, or the written consent of, the person who shall so have filed and published the said description, shall be prima facie evidence of the unlawful use, possession of, or traffic in, such vessel, and the person so using or in possession of the same, except the person who shall so have filed and published the said description as aforesaid, shall be punished as provided in section 48–303. (Mar. 3, 1901, ch. 854, § 878d, as added Feb. 27, 1907, 34 Stat. 1007, ch. 2086.)

§ 48–305. District of Columbia Court of General Sessions to issue warrant on complaint of violation.

Upon complaint of any person who has complied with section 48–302, or of his agent, to the District of Columbia Court of General Sessions, or one of the judges thereof, that any person within the District of Columbia is guilty of the violation of any provision of this chapter, the said court or judge may issue a search warrant to discover and obtain such vessels as aforesaid and their contents, and may also cause to be brought before the said court or judge the person so believed to be guilty, or his agent or employee, in whose possession or upon whose wagon or premises any such vessel or vessels may be found; and any such person, agent, or employee found guilty of a violation of any of the provisions of this chapter shall be punished as aforesaid, and the said court or judge shall also order the property taken upon any such search warrant to be delivered to its owner. (Mar. 3, 1901, ch. 854, § 878e, as added Feb. 27, 1907, 34 Stat. 1007, ch. 2086, and amended Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1.)

CHANGE OF NAME

"Municipal Court for the District of Columbia" was substituted for "police court of the District of Columbia" to conform to act Apr. 1, 1942, which consolidated the Police Court and the Municipal Court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

CROSS REFERENCE

Search warrants, see § 23–301 et seq.

§ 48–306. Regulations to be made by Recorder of Deeds.

The Recorder of Deeds of the District of Columbia is authorized to make regulations and prescribe forms for the filing of labels, trade-marks, or other distinctive marks under the provisions of this chapter. (Mar. 3, 1901, ch. 854, § 878f, as added Feb. 27, 1907, 34 Stat. 1007, ch. 2086, and amended June 25, 1936, 49 Stat. 1921, ch. 804; July 5, 1966, 80 Stat. 263, Pub. L. 89–493, § 6.)

AMENDMENT

1966—Section 6 of act July 5, 1966, substituted "Recorder of Deeds of" for "clerk of the United States District Court for".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1–504.

§ 48–307. Actions in tort permissible.

Nothing in this chapter shall prevent or restrain any person who is the legal owner of a trade-mark or label from proceeding in an action of tort against any person found guilty of violating this chapter. (Mar. 3, 1901, ch. 854, § 878g, as added Feb. 27, 1907, 34 Stat. 1007, ch. 2086.)

CROSS REFERENCE

One form of action in United States District Court for the District of Columbia, and District of Columbia Court of General Sessions, to be known as a "civil action", see rule 2 of Federal Rules of Civil Procedure, 28 U.S.C. App., and rule 2 of the civil rules of the District of Columbia Court of General Sessions.

Chapter 4.—REGISTRATION OF LABOR UNION LABELS

Sec.

48–401. Adoption of label authorized—Registration—Assignment prohibited.
48–402. Use of registered label restricted.
48–403. Penalties.

§ 48–401. Adoption of label authorized—Registration—Assignment prohibited.

A union or association of employees in the District of Columbia may adopt a device in the form of a label, brand, mark, name, or other character for the purpose of designating the products of the labor of the members thereof. A drawing of such device may be filed in the office of the Recorder of Deeds of the District of Columbia and the Recorder shall register same in a book to be provided for such purpose and be entitled to collect $1 for each registration. A certified copy of the drawing may be obtained upon the payment of $1 for each certification. (Feb. 18, 1932, 47 Stat. 50, ch. 47, § 1; July 5, 1966, 80 Stat. 263, Pub. L. 89–493, § 7(b).)

AMENDMENT

1966—Act July 5, 1966 in second sentence, substituted "Recorder of Deeds of the District of Columbia and the Recorder" for "clerk of the United States District Court for the District of Columbia and the clerk"; and, in third sentence, after "drawing", substituted "may be obtained" for "so registered may be obtained from the clerk".

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1–504.

§ 48–402. Use of registered label restricted.

No person shall in any way use or display the label, brand, mark, name, or other character adopted by any such union or association as provided in section 48–401 without the consent or authority of such union or association; or counterfeit or imitate any such label, brand, mark, name, or other character, or knowingly sell, dispose of, keep, or have in his possession with intent to sell or dispose of any goods, wares, merchandise, or other products of labor, upon which any such counterfeit or imitation is attached, affixed, printed, stamped, or impressed, or knowingly sell, dispose of, keep, or have in his possession with intent to sell or dispose of any goods, wares, merchandise, or other products of labor contained in any box, case, can, or package, to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped, or impressed. If copies of such device have been filed, the union or association may maintain an action in the United States District Court for the District of Columbia to enjoin the manufacture, use, display, or sale of counterfeit or colorable imitations of such device, or of goods bearing the same, or the unauthorized use or display of such device or of goods bearing the same, and the court may restrain such wrongful manufacture, use, display, or sale, and every unauthorized use or display by others of the genuine devices so registered and filed, if such use or display is not authorized by the owner thereof, and may award to the plaintiff such damages resulting from such wrongful manufacture, use, display, or sale as may be proved, together with the profits derived therefrom. (Feb. 18, 1932, 47 Stat. 50, ch. 47, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 48–403. Penalties.

A person violating any of the provisions of section 48–402 shall be guilty of a misdemeanor punishable by a fine of not less than $100 nor more than $500, or by imprisonment for not less than three months nor more than one year, or by both such fine and imprisonment. (Feb. 18, 1932, 47 Stat. 51, ch. 47, § 3.)

CROSS REFERENCE

Criminal penalties for altering or imitating trademark, see § 22–1402.

TITLE 49.—COMPILATION AND CONSTRUCTION OF CODE

Chap.		Sec.
1.	General Provisions	49–101
2.	Rules of Construction	49–201
3.	Laws Remaining in Force	49–301

Chapter 1.—GENERAL PROVISIONS

Sec.
49–101 to 49–110. Repealed.
49–111. Disposition of compilation of laws affecting District of Columbia.

§§ 49–101 to 49–109. Repealed. July 30, 1947, 61 Stat. 640, ch. 388, § 2.

Section 49–101, acts May 29, 1928, 45 Stat. 1007, ch. 910, § 2; Mar. 2, 1929, 45 Stat. 1541, ch. 586, § 2, authorized the preparation and publication of this Code with supplements thereto, and is now covered by U.S. Code, title 1, § 203.

Section 49–102, acts May 29, 1928, 48 Stat. 1007, ch. 910, § 4; Mar. 2, 1929, 45 Stat. 1541, ch. 586, § 3 established the laws as set forth by this Code as prima facie the law of the District, and stated forms of citation thereof, and is now covered by U.S. Code, title 1, § 204.

Sections 49–103 to 49–106, Act May 29, 1928, 45 Stat. 1008, ch. 910, §§ 5 to 8, related to establishing copies of the Code and supplements as conclusive evidence of original; providing for distribution of the Code, and for slip and pamphlet copies; additional quotas of the Code for distribution to Congress; and to further quotas to Congress for personal use, and are now covered by U.S. Code, title 1, §§ 209 to 212, respectively.

Section 49–107, acts Mar. 2, 1929, 45 Stat. 1542, ch. 586, § 4; June 13, 1934, 48 Stat. 948, ch. 483, §§ 1, 2, authorized a House committee to prescribe form and style of code and ancillaries, and is substantially covered by U.S. Code, title 1, § 206.

Sections 49–108, 49–109, act Mar. 2, 1929, 45 Stat. 1540, ch. 586, §§ 1, 7, provided that the number of copies of Code to be printed may be curtailed, and for dispensing, if desired, of the printing and distribution of supplements; that the functions of the Committee on Revision of Laws may be vested in another agency, and that the printing, binding, and distribution of said publications shall be done under the direction of the Joint Committee on Printing. See U.S. Code, title 1, §§ 201, 208.

§ 49–110. Repealed. July 2, 1958, 72 Stat. 293, Pub. L. 85–491, § 3.

Section, acts Feb. 25, 1910, 36 Stat. 208, ch. 62. Mar. 4, 1911, 36 Stat. 1299, ch. 240; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 29, 1922, 42 Stat. 668, ch. 249, § 1, dealt with the authority of the Commissioners to exchange and sell copies of building, police, plumbing, and municipal regulations. See § 1–244 (i)(1)(2).

§ 49–111. Disposition of compilation of laws affecting District of Columbia.

The commissioners of the District of Columbia, after supplying each of the heads of the several departments and offices of the government and the judiciary of said District with the necessary copies of the bound editions of the laws affecting said District, which are prepared in the office of the secretary of the board at the close of each session of Congress, may sell the surplus volumes at a rate per volume to be fixed by them, approximating but not less than the pro rata cost of compilation, and deposit all money so received to the credit of the appropriation out of which such cost is paid. (Mar. 1, 1901, 31 Stat. 826, ch. 670.)

Chapter 2.—RULES OF CONSTRUCTION

Sec.
49–201. Rules stated.
49–202. Words importing singular number to include plural.
49–203. Masculine gender to include all genders.
49–204. Person to include partnerships and corporations.
49–205. Executor to include administrator.
49–206. Oath to include affirmation.
49–207. Insane person and lunatic.

§ 49–201. Rules stated.

In the interpretation and construction of this Code the following rules shall be observed. (Mar. 3, 1901, 31 Stat. 1189, ch. 854.)

NOTES TO DECISIONS

Effect of amendment

The amendment of an act without changing the particular provision that had previously been construed by the court does not amend away or modify the judicial interpretation previously given the act, as it will be presumed that such construction was in accordance with the legislative intent. *Bardwell* v. *Petty* (1923, 286 F. 772, 52 App. D. C. 310).

Particular and general provisions

Upon appeal to decide conflict between two sections, "where there is in the same statute, a particular enactment, and also a general one, which in its most comprehensive sense, would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment." *Tri-State Motor Corp.* v. *Standard Steel Car Co.* (1922, 276 F. 631, 51 App. D. C. 109).

§ 49–202. Words importing singular number to include plural.

Words importing the singular number shall be held to include the plural, and vice versa, except where such construction would be unreasonable. (Mar. 3, 1901, 31 Stat. 1189, ch. 854.)

§ 49–203. Masculine gender to include all genders.

Words importing the masculine gender shall be held to include all genders, except where such construction would be absurd or unreasonable. (Mar. 3, 1901, 31 Stat. 1189, ch. 854.)

§ 49–204. Person to include partnerships and corporations.

The word "person" shall be held to apply to partnerships and corporations, unless such construction would be unreasonable, and the reference to any officer shall include any person authorized by law to perform the duties of his office, unless the context shows that such words were intended to be used in a more limited sense. (Mar. 3, 1901, 31 Stat. 1189, ch. 854.)

§ 49–205. Executor to include administrator.

Wherever the word "executor" is used it shall include "administrator," and vice versa, unless such application of the term would be unreasonable. (Mar. 3, 1901, 31 Stat. 1189, ch. 854.)

§ 49–206. Oath to include affirmation.

Wherever an oath is required an affirmation in judicial form, if made by a person conscientiously scrupulous about taking an oath, shall be deemed a sufficient compliance. (Mar. 3, 1901, 31 Stat. 1189, ch. 854.)

§ 49–207. Insane person and lunatic.

The words "insane person" and "lunatic" shall include every idiot, non compos, lunatic, and insane person. (Mar. 3, 1901, 31 Stat. 1189, ch. 854.)

Chapter 3.—LAWS REMAINING IN FORCE

Sec.
49–301. Common law, principles of equity and admiralty, and Acts of Congress to remain in force.
49–302. Ordinances of Washington and of levy court to remain in force.
49–303. Vestries.
49–304. Repeal and savings provisions of 1901 Code.

§ 49–301. Common law, principles of equity and admiralty, and Acts of Congress to remain in force.

The common law, all British statutes in force in Maryland on February 27, 1801, the principles of equity and admiralty, all general Acts of Congress not locally inapplicable in the District of Columbia, and all Acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force in the District of Columbia on March 3, 1901, shall remain in force except in so far as the same are inconsistent with, or are replaced by, subsequent legislation of Congress. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.)

NOTES TO DECISIONS

Decisions under prior law

Act of January 15, 1897 (29 Stat. 487) and § 330 of ch. 14 of the Federal Penal Code permitting jury to qualify verdict of guilty in cases of murder and rape are superseded by code. *Johnson* v. *United States* (1912, 38 App. D.C. 347, affirmed 32 S. Ct. 748, 225 U. S. 405, 56 L. Ed. 1142).

In general

This section is a general legislative declaration in affirmance of preexisting decisions upon the subject. *Moss* v. *United States* (1904, 23 App. D.C. 475).

Act of Maryland Legislative Assembly of 1723, ch. 16, § 10 (Abert's Comp. Stat. D. C., p. 176), relative to Sunday work does not apply in District of Columbia. *District of Columbia* v. *Robinson* (1908, 30 App. D.C. 283).

Section 1 of D. C. 1901 provided as judicial bases for determination of District of Columbia laws, British statutes in force in Maryland on February 27, 1801, the common law, and principles of equity. *Burdick* v. *Burdick* (D.C.D.C. 1940, 33 F. Supp. 921).

Arrest without warrant

In the District, and at common law, an officer may not arrest for misdemeanor without warrant unless it is committed in his presence or within his view. *Maghan* v *Jerome* (1937, 88 F. 2d 1001, 67 App. D. C. 9).

British statutes

Section of the District of Columbia Code providing for an award of costs to the prevailing party was not a "statute of the United States" within Rule of Civil Procedure conferring discretion on a trial judge in allowing costs except when an express provision therefor is made in a statute of the United States, and therefore judges of the federal District Court of the District of Columbia have discretion as to whether to allow costs to the prevailing party. *Association of Western Railways et al.* v. *Riss & Company, Inc.* (1963, 320 F. 2d 785, 116 U.S. App. D.C. 63).

This section, providing that all consistent common law and British statutes in force in Maryland at time of cession of District shall remain in force, gives to the British laws only that force which they previously had in this tract of territory under the laws of Maryland. *Manoukian* v. *Tomasian* (1956, 237 F. 2d 211, 99 U. S. App. D. C. 57, certiorari denied 77 S. Ct. 588, 352 U.S. 1026, 1 L. Ed. 2d 596).

Under this section giving force to all common law and British statutes which are not inconsistent with or replaced by subsequent legislation of Congress, statute must be given the same force and effect, and no more, than any other British statute on July 4, 1776. *Id.*

The provision of D. C. 1901, relating to British statutes in force in Maryland on February 27, 1801, was intended by Congress to mean those British statutes to the benefit of which Maryland inhabitants were entitled under the Maryland Declaration of Rights of 1776, and did not incorporate in the District of Columbia law, as amending the common law or otherwise, British statutes enacted between 1776 and 1801. *Burdick* v. *Burdick* (D.C.D.C. 1940, 33 F. Supp. 921).

The common law and all British statutes in force in Maryland on February 27, 1801, remain in force, in District of Columbia, except insofar as they are inconsistent with or are repealed by subsequent legislation of Congress. *United States* v. *Davis* (D.C.D.C. 1947, 71 F. Supp. 749 reversed on other grounds 167 F. 2d 228, 83 U.S. App. D.C. 99, certiorari denied 68 S. Ct. 1501, 334 U.S. 849, 92 L. Ed. 1772).

Common law

This section stating that the common law and all British statutes in force in Maryland on February 27, 1801, shall remain in force, intends that the system of the common law unwritten and dynamic not in its then-current pronouncements on specific problems, should remain in force. *Linkins et al.* v. *Protestant Episcopal Cathedral Foundation of the District of Columbia et al.* (1951, 187 F. 2d 357, 87 U.S. App. D.C. 351, 28 A.L.R. 2d 521).

This section established the common law as the law in District of Columbia but did not purport to freeze that law into its 1901 or 1908 mold so that it could not expand to meet the changes of a dynamic society. *Id.*

The common law, particularly as derived from the common law of Maryland, is the fundamental part of the law in the District of Columbia to which court will look in absence of statutory enactment *Id.*

Common-law crimes and jurisdiction to try the same. *Palmer* v. *Lenovitz* (1910, 35 App. D.C. 303).

Common law as to surface waters prevails. *Baltimore & O. R. Co.* v. *Thomas* (1911, 37 App. D.C. 255).

Common-law method of procuring talesman in capital cases when regular panel is exhausted. *Milano* v. *United States* (1913, 40 App. D.C. 379).

"Except as 'repealed by express statutory provision, or modified by inconsistent legislation, or where it has become obsolete or unsuited to our republican form of government, the common law of England in all its branches, both civil and criminal, remains to-day the law of the District of Columbia * * *.'" *Lisner* v. *Hughes* (1919, 258 F. 512, 49 App. D. C. 40). See, also, *De Forest* v. *United States* (1897, 11 App. D.C. 458).

Common law held to prevail in the District of Columbia as to descent of property. *Cunningham* v. *Rodgers* (1921, 267 F. 609, 50 App. D. C. 51).

The common law, insofar as it permits accumulation of income from a testamentary trust which is to terminate with the death of the testator's two nieces, involving the accumulation of a huge sum of money for a period probably in excess of sixty years, is obsolete and repugnant to our conditions, and therefore not applicable to the District of Columbia. *Burdick* v. *Burdick* (D.C.D.C. 1940, 33 F. Supp. 921).

The provision in § 1 of the D. C. 1901, that the common law shall remain in force in the District of Columbia, intended the common law of England as it existed in Maryland on Feb. 27, 1801, and so far as it had not be-

come obsolete or unsuited to our conditions, and it was not identical with the common law of England. *Burdick* v. *Burdick* (D.C.D.C. 1940, 33 F. Supp. 921). See, also, *United States* v. *Griffith* (1925, 2 F. 2d 925, 55 App. D.C. 123).

Under the provision of the District of Columbia Code of 1901, now incorporated in this section, stating that the common law and all British statutes in force in Maryland on February 27, 1801, shall remain in force, and under Maryland's Original Declaration of Rights of 1776 providing that the inhabitants of Maryland were entitled to the common law of England and to the benefit of applicable English statutes existing at the time of their first emigration, the "common law" of the District does not embrace an English case of 1799 or 1805 and an English statute passed in 1800. *Gertman* v. *Burdict* (1942, 123 F. 2d 924, 75 U. S. App. D. C. 48, 152 A. L. R. 645, certiorari denied 62 S. Ct. 917, 315 U. S. 824, 86 L. Ed. 1220).

The common law, both civil and criminal, except as repealed by express statutory provision or modified by inconsistent legislation, remains the law of the District of Columbia. *Elmhurst* v. *Shoreham Hotel* (D.C.D.C. 1945, 58 F. Supp. 484, affirmed 153 F. 2d 467, 80 U.S. App. D.C. 372).

All common-law offenses not covered by statute in force in District Court of Columbia are still recognized as crimes in the District and are punishable as such. *United States* v. *Davis* (D.C.D.C. 1947, 71 F. Supp. 749 reversed on other grounds 167 F. 2d 228, 83 U.S. App. D.C. 99, certiorari denied 68 S. Ct. 1501, 334 U. S. 849, 92 L. Ed. 1772).

The common law offense of negligent escape remains a crime in the District of Columbia by virtue of this section. *Id.*

Compact between Maryland and Virginia

The compact between Maryland and Virginia as to shores of the Potomac River is not in force in District. *United States ex rel. Greathouse* v. *Hurley* (1933, 63 F. 2d 137, 61 App. D. C. 360).

Conspiracy against United States

The Supreme [District] Court of the [United States for the] District of Columbia sitting as a criminal court had jurisdiction to try an indictment for conspiracy to commit an offense against the United States. *Pitts v. Peak* (1931, 50 F. 2d 485, 60 App. D.C. 195).

Costs, laws relating to

Section 815 of Title 28, U. S. C., disallowing costs to plaintiff recovering less than $500 in action brought in District Court of United States where jurisdictional amount exceeds such sum is applicable to District Court of the United States for the District of Columbia. *Silverman* v. *Central Amusement Co.* (D.C.D.C. 1943, 49 F. Supp. 364).

Decisions of Maryland courts

Decisions of Maryland courts, being founded upon general principles, and made since the organization of the District of Columbia, are not binding upon the courts of the District as authorities, though entitled to all the respect due to the opinions of the highest court of the State. *Phillips* v. *Negley* (1886, 6 S. Ct. 901, 117 U. S. 665, 29 L. Ed. 1013).

Decisions of Maryland, giving to the statutes of that state a construction at variance with that which prevailed at the time of the cession of the District of Columbia, does not control the decision of the United States District Court for the District of Columbia as to the effect of those statutes on the territory within the District. *Morris* v. *United States* (1899, 19 S. Ct. 649, 174 U. S. 196, 43 L. Ed. 946).

Maryland statutes and Maryland decisions of date later than 1801 do not constitute the "law" of the District of Columbia but later decisions of the Court of last resort of Maryland may be looked to for assistance, not merely in interpreting the law which was inherited from that state by the District of Columbia, but also in interpreting later statutes of the district which are the same or closely similar to those of Maryland. *Watkins* v. *Rives* (1942, 125 F. 2d 33, 75 U. S. App. D. C. 109).

Espionage Act

Provisions of the Espionage Act apply in the District of Columbia in a case of a violation of a United States statute applicable only to the District. *Nuckols* v. *United States* (1938, 99 F. 2d 353, 69 App. D. C. 120).

Full faith and credit

When rights have ripened into a judgment of a court in another state, the full faith and credit clause applies and courts of the District are bound, equally with courts of the states, to observe the command of the full faith and credit clause, wherever applicable. *Loughran* v. *Loughran* (1934, 54 S. Ct. 684, 292 U. S. 216, 78 L. Ed. 1219).

Laws of Maryland

Laws of Maryland derive their force, in this district, under 2 Stat. 103, ch. 15, §§ 1, 3, 5. But this section which gives effect to those laws, does not amount to a reenactment of them, so as to sustain them, under the powers of exclusive legislation, given to Congress over this district. This section could only give to those laws that force which they previously had in this tract under the laws of Maryland. *Bank of Columbia* v. *Okely* (1819, 17 U. S. 235, 4 Wheat, 235, 4 L. Ed. 559).

By this section it is provided that the laws of the State of Maryland, as they then existed, should be and continue in force in that part of the district which was ceded by that State to the United States. *Lee* v. *Lee* (1834, 33 U. S. 44, 8 Pet. 44, 8 L. Ed. 860).

Congress by this section provided that the laws of Maryland shall be and continue in force in that part of the District which was ceded by that State to the United States. *Clawans* v. *Sheetz* (1937, 92 F. 2d 517, 67 App. D. C. 366).

The law of wills and probate as existing in Maryland on February 27, 1801, is the law of the District of Columbia except as altered by Congress. *In re Lee's Estate* (D.C.D.C. 1948, 80 F. Supp. 293).

Laws of Virginia

Under this act the laws of Virginia, as they then existed, were declared to be and continue in force in that part of the District of Columbia which was ceded by that State to the United States, and by them accepted for the permanent seat of government; and all suits, process, etc., depending in the court of hustings for the town of Alexandria, were transferred to the circuit court of the District. *Turner* v. *Fendall* (1803, 5 U. S. 117, 1 Cranch. 117, 2 L. Ed. 53).

Right of Virginia to legislate for the District did not cease or determine until 27th of February 1801. *Young* v. *Bank of Alexandria* (1807, 8 U.S. 384, 4 Cranch. 384, 2 L. Ed. 655).

Pending suits

In the matter of procedure or practice, pending suits must be governed by the provisions of the code where the procedure does not affect the substantial rights of parties, but where the procedure does affect the substantial rights of parties, the code shall not apply as to the pending suits, but only the old law. Thus, U. S. C., title 28, §§ 512 and 513, relating to District of Columbia, were kept in force by § 1638 of the code of 1901. *Costello* v. *Palmer* (1902, App. D.C. 210).

Selection of jurors

The code supersedes prior law relative to selection of grand and petit jurors. *Clark* v. *United States* (1902, 19 App. D.C. 295).

Statute of limitations

Statute of limitations, R. S. § 1044, was applicable to contempts in the District of Columbia. *Gompers* v. *United States* (1914, 34 S. Ct. 693, 233 U. S. 604, 58 L. Ed 1119).

Trial by jury

Common-law offense of reckless driving is a crime within the constitutional provision for a trial by jury. *Colts* v. *District of Columbia* (1918, 38 F. 2d 535, 59 App. D. C. 224).

Writ of certiorari

No statute has been passed enlarging the scope of the common-law writ of certiorari in the District, and when sought between private persons, the writ will be granted or denied, in the sound discretion of the court. *United States ex. rel. Eure* v. *Borden* (1936, 80 F. 2d 527, 65 App. D. C. 84).

§ 49–302. Ordinances of Washington and of levy court to remain in force.

All laws and ordinances of the City of Washington, and of the levy court of the District of Columbia, except as modified or repealed by Congress or the legislative assembly of the District since June 1, 1871, or until so modified or repealed, remain in full force. (R. S., D. C., § 91; Comp. Stat. D. C., p. 338, § 4; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

NOTES TO DECISIONS

Legislative assembly

Act of legislative assembly, D. C., August 23, 1871, for prevention of cruelty to animals, was not repealed by section 1636 (§ 49–304) as "that section expressly saves from repeal all acts of the legislative assembly of the District of Columbia relating to 'police regulations.'" *Johnson* v. *District Court* (1908, 30 App. D.C. 520).

§ 49–303. Vestries.

All acts and parts of acts relating to the organization and powers of vestries, trustees, or other governing bodies of any religious denomination shall remain in force except in so far as the same are inconsistent with or are replaced by the provisions of this Code. (Mar. 3, 1901, ch. 854, § 1636, par. 9, as added June 30, 1902, 32 Stat. 546, ch. 1329.)

§ 49–304. Repeal and savings provisions of 1901 Code.

Sections 1636 to 1643 of act Mar. 3, 1901, 31 Stat. 1434, ch. 854, provided that:

"*Sec. 1636.* All acts and parts of acts of the general assembly of the State of Maryland general and permanent in their nature, all like acts and parts of acts of the legislative assembly of the District of Columbia, and all like acts and parts of acts of Congress applying solely to the District of Columbia in force in said District on the day of the passage of this act are hereby repealed, except:

"First. Acts and parts of acts relating to the rights, powers, duties, or obligations of the United States.

"Second. Acts and parts of acts relating to the Court of Claims.

"Third. Acts and parts of acts relating to the organization of the District government, or to its obligations, or the powers or duties of the Commissioners of the District of Columbia, or their subordinates or employees, or to police regulations, and generally all acts and parts of acts relating to municipal affairs only, including those regulating the charges of public-service corporations.

"Fourth. Acts and parts of acts relating to the militia.

"Fifth. All penal statutes authorizing punishment by fine only or by imprisonment not exceeding one year, or both.

"Sixth. Acts and parts of acts of Congress relating solely to the Departments of the General Government in the District of Columbia, or any of them.

"Seventh. Acts or parts of acts authorizing, defining, and prescribing the organization, powers, duties, fees, and emoluments of the register of wills of the District of Columbia and his office.

"Eighth. An act to regulate the practice of pharmacy in the District of Columbia, approved June fifteenth, eighteen hundred and seventy-eight; an act for the regulation of the practice of dentistry in the District of Columbia, and for the protection of the people from empiricism in relation thereto, approved June sixth, eighteen hundred and ninety-two; an act regulating the construction of buildings along alleyways in the District of Columbia, approved July twenty-second, eighteen hundred and ninety-two; an act for the promotion of anatomical science, and to prevent the desecration of graves in the District of Columbia, approved February twenty-sixth, eighteen hundred and ninety-five; an act to provide for the incorporation and regulation of medical and dental colleges in the District of Columbia, approved May fourth, eighteen hundred and ninety-six; an act relating to the testimony of physicians in the courts of the District of Columbia, received by the President May thirteenth, eighteen hundred and ninety-six; an act to regulate the practice of medicine and surgery, to license physicians and surgeons, and to punish persons violating the provisions thereof in the District of Columbia, approved June third, eighteen hundred and ninety-six; and, generally, all acts or parts of acts relating to medicine, dentistry, pharmacy, the commitment of the insane to the Government Hospital for the Insane in the District of Columbia, the abatement of nuisances, and public health.

"Ninth. Acts and parts of acts relating to the organization and powers of vestries, trustees, or other governing bodies of any religious denomination.

"All acts and parts of acts included in the foregoing exceptions, or any of them, shall remain in force except in so far as the same are inconsistent with or are replaced by the provisions of this code."

"*Sec. 1637.* The incorporation into this code of any general and permanent provision taken from an act making appropriations, or from an act containing other provisions of a private or temporary character, shall not repeal nor in any way affect any appropriation or any provision of a private or temporary character contained in any of said acts, but the same shall remain in force."

"*Sec. 1638.* The repeal by the preceding section of any statute, in whole or in part, shall not affect any act done or any right accruing or accrued or any suit or proceeding had or commenced in any civil cause before such repeal, but all rights and liabilities under the statutes or parts thereof so repealed shall continue and may be enforced in the same manner as if such repeal had not been made: *Provided,* That the provisions of this code relating to procedure or practice and not affecting the substantial rights of parties shall apply to pending suits or proceedings civil or criminal."

"*Sec. 1639.* The enactment of this code is not to affect or repeal any act of Congress which may be passed between the date of this act and the date when this act is to go into effect; and all acts of Congress that may be passed hereafter are to have full effect as if passed after the enactment of this code, and, so far as such acts may vary from or conflict with any provision contained in this code, they are to have effect as subsequent statutes and as repealing any portion of this act inconsistent therewith."

"*Sec. 1640.* Nothing in the repealing clause of this code contained shall be held to affect the operation or enforcement in the District of Columbia of the common law or of any British statute in force in Maryland on the twenty-seventh day of February, eighteen hundred and one, or of the principles of equity or admiralty, or of any general statute of the United States not locally inapplicable in the District of Columbia or by its terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, or of any municipal ordinance or regulation, except in so far as the same may be inconsistent with, or is replaced by, some provision of this code."

"*Sec. 1641.* All offenses committed and all penalties or forfeitures incurred in the District prior to the date on which this code is to take effect may be prosecuted and punished in the same manner and with the same effect as if this code had not been enacted."

"*Sec. 1642.* Where any action or proceeding by the provisions of chapter forty-one of this code would be barred at the time it goes into effect, or within one year thereafter, which would not be so barred by prior laws, such action or proceeding may be brought or instituted within such period of one year, anything in said chapter to the contrary notwithstanding."

"*Sec. 1643.* That nothing herein contained shall be held to affect the term of office of any judicial or other officer holding office when this code goes into effect and operation, except when, as in the case of the present justices of the peace and constables, a contrary intention is manifested."

Parallel Reference Tables

TABLE 1.—BRITISH STATUTES

Statute	Chap.	Sec.	Kilty	Alex.	D.C. Code
6 Edward I (1278)	5	1	211	83	45–1301
11 Henry VI (1433)	5	1	227	243	45–1303
27 Henry VIII (1535)	10	2	231	294	45–1202
52 Henry III (1267)	23	2	209	46, 47	45–1302
4 and 5 W. and M. (1692)	16	4	242	579	45–610
4 Anne (1705)	16	9, 10	246	660, 661	45–933
	16	21	246	662	45–309
7 Anne (1708)	19	1	247	679	45–608
	19	2	247	680	45–609
8 Anne (1709)	14	1	248	681	45–918
	14	4	248	682	45–922
9 Anne (1710)	14	8	248	692	22–508
4 George II (1731)	10	1, 2	249	700	45–620
	28	6	249	708	45–931
7 George II (1734)	20	1	251	726	45–605
	20	2	251	727	45–606
	20	3	251	728	45–607
11 George II (1738)	19	3	251	732	45–920
	19	11	251	737	45–934
	19	14	251	738	45–923
	19	15	251	739	45–921
	19	19, 20	251	741, 742	45–919
11 George III (1771)	20	1	253	791	45–924
	20	2	253	791	45–925
	20	3	253	792	45–926
23 George II (1750)	11	1	252	766	23–204
	11	2	252	766	23–205
29 George I (1756)	31	1	253	788	45–927
	31	2	253	789	45–928
	31	3	253	790	45–929
	31	4	253	790	45–930

TABLE 2.—VIRGINIA STATUTES

Date	Chapter	Section	U. S. Stat.		D.C. Code
			Vol.	Page	
1824					
Jan. 27	38	9	4	796	47–807.

TABLE 3.—ACTS OF THE COUNCILS OF THE CORPORATION OF THE CITY OF WASHINGTON

Date	Page	Chapter	Section	Council	D.C. Code
1869					
June 10	22	36	1, 2	66th	47–2901.
1870					
Mar. 7	22	42	1, 2	67th	47–2902.
	22	42	3	67th	47–2901 note, 2903.
	22	42	4, 5	67th	47–2904.

TABLE 4.—ACTS OF LEGISLATIVE ASSEMBLY OF THE DISTRICT OF COLUMBIA

Date	Page	Chapter	Section	D.C. Code
1871				
Aug. 19	48	51		1–303.
Aug. 22	78	65		47–101.
Aug. 23	96	69	21	22–3401 Omitted.
	135	106	1	22–801.
	135	106	2	22–802.
	135	106	3	22–803.
	136	106	4	22–804.
	136	106	5	22–805.
	137	106	6	22–806.
	137	106	7	22–807.
	137	106	8	22–808.
	137	106	9	22–809.
	138	106	10	22–811.
	138	106	11	22–812.
	138	106	12	22–813.
	143	108	1	47–305.
	145	108	7	47–302.
1871				
Aug. 23	146	108	10	47–120.
	149	108	16	43–1506.
	150	108	18	1–301.
	150	108	19	1–302.
1872				
Jan. 19	52	31	1	47–1016.
	52	31	2	47–1017.
	53	31	4	47–1018.
June 20	65		1	47–2905.
	65		2	47–2906.
	65, 66		3	47–2907.
1873				
June 23	50	8	3	31–118.
June 25	65	25	4	1–704.
June 26	116	46	1	47–2908.
	116	46	2	47–2909.
	116	46	3	47–2910.
	116	46	4	47–2911.

TABLE 5.—REVISED STATUTES OF THE UNITED STATES

Revised Statutes	D.C. Code
441	31-1022.
1803	43-1538.
1805	43-1537.
1806	22-3118.
1813	7-620.
1818	7-1209.
1820	9-105.
4844	32-405.
4852	32-407.
4853, 4854	32-406.

TABLE 6.—REVISED STATUTES OF THE DISTRICT OF COLUMBIA

R.S.D.C.	D.C. Code
1	1-101.
1	22-3122.
2	1-102.
2	22-3122.
3	1-218.
6	1-220.
77	7-101.
82	1-802.
85	1-308.
86	1-316.
87	47-103.
91	49-302.
94	1-107.
96	1-104; 22-3122.
116	47-104.
118	47-104.
138	47-722.
139	47-723.
143	47-409.
152	47-1107.
173	47-1015.
192	4-412.
195	43-1503.
197	43-1521.
198	43-1522.
203	43-1523.
204	43-1501.
205	43-1525.
206	43-1526.
207	43-1527.
208	43-1528.
214	43-1507.
215	43-1508
216	43-1509.
217	43-1524.
218	43-1534.
219	43-1535.
220	43-1536.
223	7-1202.
224	7-1203.
225	7-1206.
226, 227	7-1207.
228, 229	7-1204.
230	7-1208.
233	7-710.
246	7-104.
247	7-102.
249	7-105.
267	7-332.
268	22-3120.
269	22-3121.
270	22-3122.
274	31-1102.
281	31-1110.
282	31-1111.
283	31-1109.
306	31-1112.
310	31-1113.
317	31-805.
318	31-806.
319	31-807.
320	31-808.
394	4-136.
395	4-138.
397	4-140.
398	4-141.
399	4-142.
400	4-143.
401	4-144.
402	4-145.
403	4-146.
404	4-147.
405	4-148.
406	4-149.
407	4-150.
408	4-151.
409	4-152.
410	4-153.
411	4-154.
412	4-155.
413	4-156.
414	4-157.
415	4-158.
416	4-159.
417	4-160.
418	4-161.
419	4-162.
420	4-163.
421	4-164.
422	4-165.
423	4-166.
424	4-167.
429	4-172.
430	4-174.
431	4-175.
432	22-505.
433	22-1306.
434	4-176.
437	4-177.
438	4-178.
453	29-513.
454	29-514.
455	29-515.
456	29-516.
459	45-408.
460	45-409.
998	32-205.
1179	22-3413.
1180	22-2602.

TABLE 7.—STATUTES AT LARGE

VOLUME 1

Date	Page	Chapter	Section	D.C. Code
1792				
Apr. 2	248	16	9	13-202 Rep.*
	248	16	9	19-410 411 Rep.*

VOLUME 2

Date	Page	Chapter	Section	D.C. Code
1801				
Feb. 27	107	15	12	11-501 Rep.

VOLUME 4

Date	Page	Chapter	Section	D.C. Code
1825				
Mar. 3	101	52	----------	47-807.

VOLUME 9

Date	Page	Chapter	Section	D.C. Code
1849				
Mar. 3	775	128	10	47-808.

VOLUME 12

Date	Page	Chapter	Section	D.C. Code
1861				
Mar. 2	220	84	10	1-808.
Mar. 3	762	91	1	11-301 312 401 1301 1302 1304 Rep.*

VOLUME 16

Date	Page	Chapter	Section	D.C. Code
1870				
May 24	139	111	4	47-809.
June 17	153	133	----------	11-710b 710c 715a 716b 724a 748a 754a Rep.*
June 21	158	135	1	32-201.
	158	135	2	32-202.
	158	135	3	32-203.
	158	135	4	32-204.
	158	135	5	32-205.
	158	135	6	32-206.
	159	135	7	32-207.
	159	135	8	32-211.
	160	141	4	11-501 Rep.*

VOLUME 18

Date	Page	Chapter	Section	D.C. Code
1874				
June 20	116	337	1	1-316.
	116	337	2	1-218, 220, 301, 308, 802, 803.
	116	337	2	7-101, 102.
	116	337	2	43-1503, 1506, 1521.
	116	337	2	47-302, 305, 722, 1016.
	117	337	2	1—901.
	117	337	3	1-205.

*Repealed pursuant to one of the revisions, enactments and reenactments specified in Tables 10, 11, 12, and 13. See those tables for disposition of all Code sections so repealed.

TABLE 7.—STATUTES AT LARGE—Continued

VOLUME 18—Continued

Date	Page	Chapter	Section	D.C. Code
1874				
June 23	278	480	2	43-605.
	278	480	3	43-1201.
	278	480	4	43-1203.
	278	480	5	43-1204.
	279	480	10	43-605.
	280	480	13, 14	43-1205.
	280	480	15	22-3116.
	283	490		6-102.
1875				
Mar. 1	337	117		1-235.
Mar. 3	508	168	2	47-805.

VOLUME 19

Date	Page	Chapter	Section	D.C. Code
1876				
May 3	49	90	1	32-802.
	49	90	2	32-805.
	49	90	3	32-808.
	49	90	4	32-809.
	50	90	5	32-810.
	50	90	6	32-811.
	50	90	7	32-812.
	50	90	8	32-815, 908.
	51	90	9	32-816, 909.
	51	90	10	32-817.
	51	90	11	32-818.
	51	90	12	32-819.
	51	90	13	32-822
	51	90	14	32-807.
	52	90	15	32-806, 904.
	52	90	16	32-804.
July 12	87	180	18	43-1522.
1877				
Feb. 27	253	69	2	4-412.
	253	69	2	11-306 Rep.*
Mar. 3	347	105		32-401, 405.
	402	117	15	1-105.

VOLUME 20

Date	Page	Chapter	Section	D.C. Code
1878				
Feb. 4	23	12	3	1-106.
Apr. 29	39	69		45-501.
June 11	102	180	1	1-101 note, 102, 103.
	102	180	1	22-3122.
	102	180	2	1-102 note.
	103	180	2	1-201, 203, 206 to 210, 220, 308, 802, 803, 3122.
	103	180	2	7-101, 102.
	103	180	3	1-103 note, 218, 801; 43-1503, 1506, 1521.
	104	180	3	1-216, 219, 221, 234
	105	180	4	47-309
	105	180	5	7-601
	106	180	5	7-602 to 604
	107	180	5	7-605.
	107	180	6	4-104, 119, 123, 126, 127, 129, 130, 133, 134, 136, 137, 139, 142, 144, 145, 147, 148, 155, 163 174 177.
	107	180	6	31-1110, 1111, 1112, 1113.
	107	180	8	6-101, 102.
	108	180	12	1-238.
	108	180	13	47-102.
June 14	131	194	1, 2	1-228.
June 19	173	323	1	47-2001.
	173	323	2	47-2002.
	173	323	3	47-2003.
	174	323	4	47-2004.
	174	323	5	47-2005.
	174	323	6	47-2006.
	174	323	7	1-230.
	174	323	8	47-2007.
	174	323	9	22-1111.
1879				
Feb. 6	283	50		47-306, 1010.
Mar. 3	353	174		45-407.
	395	182	1	32-402.
	408	182		31-803.

VOLUME 21

Date	Page	Chapter	Section	D.C. Code
1879				
June 10	9	16		43-1503, 1505.
1880				
June 4	156	121	1	32-803.
	157	121	1	32-1002.
June 16	270	235		24-420.
Apr. 24	304	25	1	6-111.
	305	25	2	6-112.
1881				
Jan. 25	318	27		1-724.
Mar. 3	459	134	1	32-813.
	460	134	1	47-301.
	462	134		7-1206.
	466	134	1	47-210.

VOLUME 22

Date	Page	Chapter	Section	D.C. Code
1882				
June 16	105	222	3	47-811.
July 1	138	263	1	43-1203.
	139	263	1	1-304.
	143	263	2	43-1502.
	144	263	2	43-1504.
	144	263	3	47-310.
Aug. 5	243	389		4-201.
1883				
Mar. 3	470	95	1	1-818.
	470	95	2	47-310.
	569	137	5	47-703.

VOLUME 23

Date	Page	Chapter	Section	D.C. Code
1884				
July 5	125	227	1	1-810.
	127	227	1	32-1001.
1885				
Feb. 13	302	58	1	22-805, 806, 808.
	319	145	1	47-107.
	302	58	2	32-209.
	303	58	3	22-901.
Feb. 25	313	145	1	1-816.
	314	145	1	32-1005.
	318	145	1	31-1105.
	319	145	1	43-1503, 1508, 1522, 1536.
	302	58	1	32-201, 208.
Mar. 3	350	334	4	47-812.

VOLUME 24

Date	Page	Chapter	Section	D.C. Code
1886				
Apr. 22	14	58		1-108.
Aug. 4	252	902	1	47-208.
1887				
Jan. 26	364	43		47-810.
Jan. 26	368	49	1	1-224.
	369	49	2	1-225.
Feb. 23	411	214		47-813.
	413	217	2	47-814.
Feb. 28	427	272	1	2-1501.
	427	272	2	2-1502.
	427	272	3	2-1503.
	427	272	4	2-1504.
	427	272	5	2-1505.
	427	272	6	2-1506.
	427	272	7	2-1507.
Mar. 3	501	355		1-807.
	580	390	1, 2	1-229.

*Repealed pursuant to one of the revisions, enactments and reenactments specified in Tables 10, 11, 12, and 13. See those tables for disposition of all Code sections so repealed.

TABLE 7.—STATUTES AT LARGE—Continued

VOLUME 25

Date	Page	Chapter	Section	D.C. Code
1888				
Mar. 9	45	30		45-1505.
July 9	245	595	2	32-902.
	246	595	3	32-903.
	246	595	4	32-905.
	246	595	5	32-904.
	246	595	6	32-907, 908, 909.
	246	595	8	32-913.
	246	597		14-403.
July 18	314	676		47-107.
	316	676		47-127.
	319	676		7-621.
	323	676	1	43-1401.
July 23	340	694	1	4-116.
	340	694	2	4-117.
	340	694	3	4-118.
Oct. 12	554	1095	1	32-101.
	554	1095	2	32-102.
	554	1095	3	32-103.
	554	1095	4	32-104.
1889				
Feb. 28	1390	J. Res. 21		6-114.
Mar. 1	772	328	1	39-101.
	772	328	2	39-102.
	773	328	3	39-103.
	773	328	4	39-104.
	773	328	5	39-105.
	773	328	6	39-112.
	773	328	7	39-201.
	773	328	8	39-202.
	773	328	9	39-204.
	774	328	10	39-106.
	774	328	11	S. 39-107.
	774	328	18	39-111.
	775	328	19	39-206.
	775	328	20, 21	39-207.
	775	328	22	39-208.
	775	328	23	39-210.
	775	328	24	39-214.
	775	328	25	39-301.
	775	328	26	39-401 note.
	776	328	27	39-402 note.
	776	328	31	39-501.
	776	328	32	39-502.
	776	328	33	39-504.
	777	328	34	39-505.
	777	328	37	39-512.
	777	328	38	39-513.
	777	328	39	39-514.
	778	328	40	39-601.
	778	328	41	39-602.
	778	328	42	39-515.
	778	328	43	39-607.
	778	328	44	39-516.
	778	328	45	39-603.
	778	328	46	39-604.
	779	328	47	39-605.
	779	328	48	39-606.
	779	328	49	39-608 Rep.
	779	328	50	39-701, 702.
	779	328	51	39-703.
	780	328	55	39-802.
	780	328	56	39-803.
	780	328	57	39-804.
	780	328	59	39-903.
	781	328	60	39-901.
	781	328	61	39-904.
	781	328	62	39-905.
Mar. 2	797	370		44-209.
	802	370	1	1-812.
	808	370	3	47-132.
	962	411	1	31-1010.

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1890				
June 17	159	428		43-1501, 1525.
Aug. 6	294	724		47-304.
	295	724		47-122.
	306	724	1	8-141.
Sept. 27	495	1001	7	8-148.
Dec. 24	1113	No. 7		1-201, 202, 211.
1891				
Jan. 19	719	76	2	7-1210.
Mar. 3	848	536		11-710b, 710c, 715a, 716b, 724a, Rep.*
	868	540		5-204.
	1064	546		47-112.

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1892				
Mar. 21	10	19		22-1208.
Mar. 31	13	30		47-601.
Apr. 5	14	34		22-3117.
Apr. 23	21	53	1	1-725.
	21	53	2	2-1404.
	21	53	3	1-726.
	21	53	4	1-727.
Apr. 28	22	55		1-220.
May 11	29	65	1	4-601.
	29	65	2	4-602.
	29	65	3	4-603.
May 13	37	74		47-306, 1010.
June 25	60	135	2	32-210.
	60	135	3	22-813.
	60	135	4	22-811, 812.
	61	135	5	22-814.
	61	135	6	22-810.
July 14	151	171	1	47-112.
	154	171	1	21-105 Rep.*
	162	171	1	6-108.
July 26	269	250	3	3-115.
	269	250	4	3-116.
	269	250	5	3-117.
	269	250	6	3-118.
July 29	322	320	1	22-3112.
	322	320	2	22-3113.
	322	320	3	22-1109.
	322	320	4	22-1117.
	323	320	6	22-1107.
	324	320	9	22-1112.
	324	320	10	22-1110.
	324	320	11	22-1114.
	324	320	13	22-3110.
	325	320	14	22-1113.
	325	320	15	4-120.
	325	320	15	22-3111.
	325	320	16	22-1118.
	325	320	17	22-1108.
	325	320	18	22-109.
	325	321	1, 2	29-105.
Feb. 26	394	No. 4	2	1-226.
1893				
Feb. 9	435	74	4	11-204 Rep.*
	436	74	10	11-206 Rep.*
Mar. 2	532	197	1	7-108.
	532	197	2	7-109.
	533	197	3	7-110.
	534	197	4	7-111.
	534	197	5	7-112.
Mar. 3	543	199		1-725, 727
	543	199		2-1404.
	543	199		43-1201, 1202, 1204.
	544	199	1	7-501, 706; 43-1529.
	552	199	1	32-1003; S. 3-116.[2]
	553	199	1	32-1004.
	591	208	1	1-317
July 8	724	638		22-1211.

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1894				
Jan. 27	33	22		1-808.
Mar. 14	44	40		7-610.
July 30	160	172	1	11-204 Rep.*
	162	172	3	11-206 Rep.*
July 31	202	174	1	47-201.
Aug. 6	999	230		47-817.
Aug. 7	244	232	1	1-729.
	247	232	1	7-608.
	250	232	1	7-606
	250	232	1	44-204.
	252	232	1	7-503.
	252	232	1	8-149.
	254	232		31-1104.
	257	232	1	6-113.
Aug. 11	275	253		43-1511.
Aug. 14	282	287	1	47-701.
	282	287	2	47-604.
	283	287	3	47-702.
	283	287	4	47-704.
	283	287	6	47-705.
	283	287	7	47-706.
	283	287	8	47-707.
	284	287	9	47-708 note.
	284	287	10	47-709 note.
	284	287	11	47-710 note.
	284	287	12	47-712 note.
	285	287	13	47-606.
	285	287	14	47-209.

*Repealed pursuant to one of the revisions, enactments and reenactments specified in Tables 10, 11, 12, and 13. See those tables for disposition of all Code sections so repealed.

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Aug. 24	501	329		45-506.
Jan. 27	577	J. Res. 9		11-102 Transferred.*
Aug. 1	588	J. Res. 40	1	7-120.
	588	J. Res. 40	2	7-121.
1895				
Feb. 11	650	79		1-107, 235.
	650	79		22-1108, 1117, 3118.
	650	79		43-1503, 1537.
	650	79		44-209.
	650	79		47-703.
	650	79		49-302.
Mar. 2	709	164		33-301 note.
	758	176	1	6-501.
	758	176		32-311
	964	192	1	36-310.
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1896				
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	10	25	3	4-603.
Apr. 24	98	123		47-721.
May 4	112	154	1	31-901.
	113	154	2	31-902.
	113	154	4	31-903.
	113	154	5	31-904.
	113	154	6	31-905.
May 19	125	206	1	6-401.
	125	206	2	6-402.
	126	206	3	6-403.
	126	206	4	6-404.
May 25	138	245		14-308 Rep.*
May 29	191	270		4-159.
June 3	244	315	1	37-101.
	244	315	2	37-102.
	244	315	3	37-103.
	244	315	4	37-104.
	244	315	5	37-105.
		315	6	37-106.
June 8	281	373		32-306.
June 10	320	395	10	44-215.
June 11	394	419	1	47-303.
	401	419	1	43-1101.
	404	419		4-501 note.
	410	419	1	32-501, 1007.
	411	419	1	32-1008.
1897				
Jan. 26	499	94	4	31-1024.
Mar. 2	619	364		22-1305.
Mar. 3	683	387	1	32-1008.

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	246	25	3	33-103.
	247	25	4	33-104.
	247	25	5	33-105.
	247	25	6	33-106.
	248	25	7	33-107.
	248	25	8	33-108.
	248	25	9	33-109.
	248	25	10	33-110.
Feb. 28	250	32	1	47-1001
	250	32	2	47-1002.
	250	32	3	47-1003.
	251	32	4	47-1005.
	252	32	5	47-1006.
	252	32	6	47-1007.
	252	32	7	47-1008.
	252	32	8	47-1009.
May 5	398	241	1	33-201.
	398	241	2	33-202.
	398	241	3	33-203.
June 7	747	J.Res. 46		1-222.
June 8	434	394	1	11-501.
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	477	467	4	2-1405.
	477	467	5	2-1406.
	477	467	6	2-1407.
	477	467	7	7-615.
	477	467	8	7-616.
June 24	489	496	3	4-112.
June 28	520	519	3	7-113.
	520	519	5	7-114.
	520	519	6	7-115.
June 30	526	540		47-112, 123
	532	540	1	7-106.
July 1	570	543	1	8-110.
	570	543	2	8-108.
	570	543	3	5-204.
	570	543	4	8-127.
	570	543	5	8-135.
	571	543	6	8-143.
	635	546	1	32-316.
July 7	664	571	1	43-1103.
	666	571	1	1-215
	666	571	1	47-602.
July 8	723	638		22-1107, 3112
	724	638		22-1112, 1201.
	724	640	1	7-1101.
	724	640	2	7-1102.
	724	640	3	7-1103.
	725	640	4	7-1104.
	725	640	5	7-1105.
	753	J.Res. 59		43-1104.
1899				
Feb. 28	906	218		1-804.
Mar. 1	923	323	1	5-501.
	923	323	2	5-502.
	923	323	3	5-503.
	923	323	4	5-504.
		323	5	5-505.
	959	326	1	6-901.
	959	326	2	6-902.
	959	326	3	6-903.
Mar. 3	1046	422	1	1-728.
	1053	422	1	43-1107.
	1101	424	1	31-1020.
	1346	432	2	10-121.
	1376	457	1	47-401.
	1377	457	2	47-402.
	1377	457	3	47-403.
	1377	458	1	9-101.
	1378	458	2	8-156; 9-102.

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1900				
May 26	217	587	1	43-1301.
	218	587	2	43-1302.
	218	587	3	43-1303.
May 31	248	599	2	7-117.
June 2	252	612	2	43-1518.
June 5	267	715		32-806, 816
June 6	559	789	1	7-619.
	563	789	1	43-1106.
	568	789	1	1-812.
	663	806	7, 8	47-818.
	664	807		3-111, 112.
	665	807		3-113.
	671	811		39-205.
1901				
Feb. 12	772	353	10	7-1211.
	772	353	11	7-508.
	773	353	12	7-507.
	773	353	14	47-720.
	777	354	5	7-1212.
	779	354	9	47-719.
Feb. 28	819	623	1	4-102, 103, 106, 121, 122, 124, 125.
	820	623		4-110.
	820	623	5	4-173.
Mar. 1	826	670	1	49-111.
	844	670	1	31-1008.
Mar. 3	1095	847	1	3-120.
	1095	847	2	3-121.
	1095	847	4	22-902.
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*Repealed pursuant to one of the revisions, enactments and reenactments specified in Tables 10, 11, 12, and 13. See those tables for disposition of all Code sections so repealed.

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Mar. 22	88	273	----------	45-406.
Apr. 28	152	594	1	4-206.
	152	594	----------	11-1104 Transferred.*
Apr. 29	173	638		2-201.
	173	638	2	2-202.
	174	638	3	2-203.
	174	638	4	2-204.
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	175	638	6	2-206.
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	175	638	8	2-208.
	175	638	9	2-209.
June 20	393	1136	1	43-1402.
	393	1136	2	43-1403.
	394	1136	3	43-1404.
	394	1136	4	43-1405.
	395	1136	5	43-1406.
	395	1136	6	43-1407.
	395	1136	7	43-1408.
June 30	521	1329	----------	11-724, 725, 741, 744, 745, Rep.*
	522	1329	----------	11-312 Rep.*
	523	1329	----------	11-319 Rep.*
	523	1329	----------	13-105, 107, 111 Rep.*
	523	1329	----------	16-1301 Rep.*
	524	1329	----------	13-113 Rep.*
	524	1329	----------	16-1501 Rep.*
	524	1329	----------	21-301, 303 to 305, 401 Rep.*
	525	1329	----------	11-504 Rep.*
	525	1329	----------	19-403 Rep.*
	526	1329	----------	11-516 to 519 Rep.*
	526	1329	----------	19-301, 312 Rep.*
	527	1329	----------	11-401, 1201, 1505, 1507 Rep.*
	527	1329	----------	18-607 Rep.*
	527	1329	----------	21-210 to 212 Rep.*
	528	1329	----------	11-204 Rep.*
	528	1329	----------	12-103 Rep.*
	528	1329	----------	16-102 Rep.*
	528	1329	----------	18-501 Rep.*
	528	1329	----------	20-106, 203, 217, 302 Rep.*
	529	1329	----------	18-301, 303, 305, 404, 510, 527 Rep.*
	529	1329	----------	20-117, 219, 501, 602, 603, 605 Rep.*
	530	1329	----------	13-301 Rep.*
	530	1329	----------	16-311, 322, 611, 1701 Rep.*
	530	1329	----------	18-707, 711, 715 Rep.*
	530	1329	----------	28-2406, 2604 Rep.*
	530	1329	----------	45-1503.
	531	1329	----------	30-216.
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	532	1329	----------	45-101, 408 to 412, 504, 601 to 603, 611, 614, 615, 619.
	533	1329	----------	1-511, 514.
	533	1329	----------	29-201, 214, 217, 606.
	533	1329	----------	42-103.
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	534	1329	----------	22-3115.
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	534	1329	----------	29-725.
	534	1329	----------	35-101, 103, 105, 203, 913.
	534	1329	----------	44-102, 211.
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	536	1329	----------	23-107.
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	537	1329	----------	18-108 Rep.*
	537	1329	----------	23-103 Rep.,* 104, 111.
	538	1329	----------	14-201 Rep.*
	538	1329	----------	16-516, 519, 520 Rep.*
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	540	1329	----------	14-104, 203, 204, 303, 305 Rep.*
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	541	1329	----------	15-212, 214, 215, 306 Rep.*
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	542	1329	----------	21-115 Rep.*
	542	1329	----------	28-2703, 2705 Rep.*
	542	1329	----------	28-3006 Rep.*
	542	1329	----------	45-905, 911.
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	543	1329	----------	16-1004, 1202 Rep.*
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July 1	561	1351	1	11-1520a Rep.*
	561	1351	1	47-106.
	591	1352	1	22-702.
	592	1352	1	47-119. 121.
	598	1352	1	7-507.
	602	1352	1	43-1105.
	609	1352	1	11-206 Rep.*
	610	1352	1	28-2701 Rep.*
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	620	1352	6 (10)	47-1208.
	620	1352	6 (11)	47-1213.
	621	1352	6 (12)	47-1301.
	621	1352	6 (14)	47-1706.
	622	1352	6 (15)	47-1707.
	622	1352	6 (16)	47-1708.
	622	1352	6 (17)	47-1709.
	622	1352	6 (18)	47-1303.
	622	1352	6 (19)	47-1214.
	622	1352	7 (1)	47-2301.
	623	1352	7 (2)	47-2302.
	623	1352	7 (3)	47-2303.
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	623	1352	7 (5)	47-2305.
	623	1352	7 (6)	47-2306.
	623	1352	7 (7)	47-2307.
	623	1352	7 (8)	22-1208.
	623	1352	7(8)	47-2308.
	623	1352	7 (9)	47-2309.
	624	1352	7 (10)	47-2310.
	624	1352	7 (11)	47-2311.
	624	1352	7(12)	47-2312.
	624	1352	7(13)	47-2313.
	624	1352	7(14)	47-2314.
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	626	1352	7(31)	47-2331.
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	627	1352	7(34)	47-2334.
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633		1358	1 (3)	47-1003.
635		1358	1 (4)	47-1005.
635		1358	1 (5)	47-1006.
635		1358	1 (6)	47-1007.
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635		1358	1 (8)	47-1009.
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Feb. 28	914	856	6	47-718.
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Mar. 3	962	992	1	7-607.
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Feb. 16	14	159	1	7-107.
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Feb. 26	51	164		7-119.
Apr. 12	587	J. Res. 21		7-116.
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	244	1417	2	43-1511.
	245	1417	3	43-1512.
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Apr. 23	297	1490	1	30-106.
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Apr. 26	306	1602	1	1-719.
	307	1602	2	1-720.
	307	1602	3	1-721.
	307	1602	4	1-723.
	363	1628	1	1-304.
	364	1628	1	47-806.
	368	1628	1	47-311.
	373	1628	1	1-236.
	376	1628	1	8-150.
	376	1628	1	43-1108.
	379	1628	1	31-1116.
Apr. 28	554	1808	833a	22-1406 Rep.*
	555	1809	1	28-1701.
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	734	734		7-305.
	734	734		7-313.
	734	734		7-314.
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	736	734		7-320.
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	737	734		7-325.
	737	734		7-326.
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Mar. 1	821	1299		4-501 note.
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	72	957	12	5-311.
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	73	960		11-101, 901 Rep.*
	73	960	8	32-116, 117, 120, 209, 815, 817, 908.
Mar. 23	86	1131	1	22-903.
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Mar. 31	94	1356	1	1-807.
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Apr. 14	113	1624		24-301.
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May 7	175	2084	1	2-601.
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June 19	308	3438	9	47-2110.
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June 20	314	3443	1	4-401.
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June 21	384	3505	1	5-201.
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June 27	483	3553	1	2-1401.
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June 28	546	3575	1	1-805.
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Feb. 9	887	913	1	2-401.
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May 16	164	172	3	22-1508.
May 23	247	190	4	44-206.
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May 26	274	198	1	1-305.
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	296	198	1	4-103, 501 note.
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May 27	355	200	1	8-129, 157.
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May 30	493	227	1	1-809.
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	987	150	8(57)	43-603.
	987	150	8(58)	43-604.
	987	150	8(59)	43-605.
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	404	93	5	35-1105.
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June 29...	668	249	1	24-422.
	688	249	1	31-609a.
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	702	249	1	32-307.
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Sept. 16...	845	318	1	7-801.
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	846	318	5	7-805.
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	846	319	----------	47-823.
1923				
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	178	202	4	2-504.
	179	202	5	2-505.
	179	202	6	2-506.
	179	202	7	2-507.
	179	202	8	2-508.
	179	202	9	2-509.
	179	202	10	2-510.
	180	202	11	2-511.
	180	202	12	2-512.
	180	202	13	2-513.
	181	202	14	2-514.
	181	202	15	2-515.
	181	202	16	2-516.
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	181	202	18	2-518.
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	182	202	22	2-522.
June 6...	463	270	1	1-1001.
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	463	270	2	1-1002.
	463	270	2	8-102.
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June 10	538	439		29-603.
June 30	838	764		43-1530.
July 1	840	783	2	4-405.
	840	783	4	4-802.
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July 3	957	848	1	9-201 note, 202.
	962	848	1	7-513.
	963	848	1	7-510, 523.
	969	848	1	31-609a.
	970	848	1	7-123 note.
	975	848	1	6-115.
	977	848		11-207 Omitted. See 11-341 (b).
	988	848	1	43-1520.
	989	848	1	43-1511.
	1007	853		8-171.
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Feb. 12	1087	119	1	7-520.
	1089	120		29-238 to 240.
Feb. 14	1159	187	1	32-403 note.
Feb. 20	1197	246	1	7-622.
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	1199	246	10	7-631.
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Feb. 23	1380	282	1	47-118.
	1381	282	1	8-142.
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	1427	317		40-605
	1428	317	4	40-302.
	1429	317	5	40-612.
	1429	317	6	40-302, 303 notes.
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	50	47	2	48-402.
	51	47	3	48-403.
Apr. 14	79	98		32-309.
	79	100		43-1530.
Apr. 16	86	118	1	4-601.
	87	118	2	4-602.
	87	118	3	4-603.
	87	118	4	4-604.
Apr. 20	87	121		29-602.
Apr. 22	131	125	1	32-403 note.
	134	131	1	31-106.
	134	131	2	31-107.
May 13	154	180	1	8-114.
May 17	158	189		35-204.
	158	190		45-406.
May 20	161	197	1	8-115.
	162	197	2	8-116.
May 21	163	200	1	8-164.
	164	200	2	8-165.
	164	200	3	8-166.
June 14	303	248	1	7-309.
	303	248	2	7-310.
	303	248	3	7-311.
	304	248	4	7-312.
June 15	319	265	4	43-1304.
June 18	322	269	1	7-1216.
	322	269	2	7-1217.
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	324	269	8	7-1223.
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June 29	350	308		9-201 note.
	360	308	1	31-609
	368	308		11-207 Omitted. See 11-341 (b).
July 1	550	366		47-2301, 2302.
	551	366		47-2303 to 2308.
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July 7	608	441		1-804.
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July 8	647	462		16-605 Rep.*
	650	465	1	22-3201.
	650	465	2	22-3202.
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*Repealed pursuant to one of the revisions, enactments and reenactments specified in Tables 10, 11, 12, and 13. See those tables for disposition of all Code sections so repealed.

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July 15	697	492	3	24-203.
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Dec. 15	747	4	1	7-401.
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Feb. 28	1347	130	1	47-901.
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Mar. 3	1482	206	1	23-601.
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Mar. 4	1564	274	1	26-103.
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June 16	229	93	1	7-524.
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	322	4	5	25-105.
	322	4	6	25-106.
	322	4	7	25-107.
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Apr. 30	654	181	1	25-111.
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June 4	834	373	1	35-1001.
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	843	388	3	5-303.
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	845	388	8	5-308.
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	845	388	10	5-310.
	846	388	11	5-311.
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	860	389	1	31-609a.
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	866	389		11-207 Omitted. See 11-341 (b).
June 5	880	391		24-209.
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*Repealed pursuant to one of the revisions, enactments and reenactments specified in Tables 10, 11, 12, and 13. See those tables for disposition of all Code sections so repealed.

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	190	207		1	43-907.
	190	207		1	44-203, 211.
	190	207		1	45-1416.
	190	207		1	46-113 Rep.*
	190	207		1	47-1303, 1401, 1405, 1410, 1529, 1542, 1803.
	190	207		1	47-1913, 2204, 2206, 2207, 2309, 2346.
	190	207		1	48-205, 210, 305.
	191	207		2	11-753 Rep.*
	191	207		3	11-754 Rep.*
	192	207		4	6-904.
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	193	207		5	11-756 Rep.*
	194	207		6	11-101, 771 Rep.*
	195	207		7	11-772 Rep.*
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	196	207		9	11-774 Rep.*
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	375	428			47-2331.
June 22	376	433		1	47-1502.
	377	433		4 (a)	47-1502 note.
	377	433		4 (b)	47-1546 note.
	377	433		5	47-1630.
	377	433		6	47-1630 note.
June 27	398	450		1	5-105a note.
	425	452		1	1-263 note.
	429	452		1	44-213 note.
	434	452		1	31-716a.
	435	452		1	31-609a.
	439	452		1	4-413 note.
	439	452		1	32-327 note.
	439	452		1	33-111 note.
	441	452		1	32-321 note.
	441	452		1	32-326.
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	455	452		1	7-603 note.
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	460	452		6	1-243 note.
	460	452		7	1-310a note.
	460	452		8	40-603b note.
	460	452		11	47-2501.
July 1	467	467			31-631a.
July 2	585	475	II		32-403 note.
Aug. 6	740	548		1	6-1009.
	741	548		2	6-1011.
	741	548		2	6-1012.
	741	548		2	6-1013.
Sept. 26	757	562		1	2-104.
	758	562		2	2-135.
	759	564		1	45-1605.
	759	564		2	45-1607.
	760	565			22-1112.
Nov. 9	1016	636			46-303.
Nov. 25	1023	642		1	40-605.
	1023	642		2	40-301.
Dec. 15	1051	734			44-301.
Dec. 17	1056	762		7	1-224a.
Dec. 24	1083	818		1	5-317.
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	1084	818		3	5-319.
	1084	818		4	5-320.
	1084	818		5	5-321.
	1084	818		6	5-322.
	1085	818		7	5-323.
	1089	826		1	47-801a.
	1091	826		2	47-801b.
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June 1	93	109			36-301.
June 4	100	117			46-301.
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July 1	314	184		1	1-263 note.
	322	184		1	31-609a.
	322	184		1	31-681
	322	184		1	31-682
	322	184		1	31-699 note, 699a note.
	323	184		1	31-716a note.
	324	184		1	9-219.
	324	184		1	31-305.
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	326	184		1	4-413 note.
	327	184		1	32-327 note.
	327	184		1	33-111 note.
	328	184		1	32-321 note.
	338	184		1	40-604 note.
	338	184		1	40-808 note.
	341	184		1	7-603 note.
	344	184		2	7-1235.
	344	184		2	7-1236.
	344	184		2	46-303a note.
	345	184		3	7-1237.
	345	184		4	7-1238.
	346	184		6	1-243 note.
	346	184		7	1-310a note.
	346	184		8	40-603b. note.
July 3	372	188		1	33-501.
	372	188		2	33-503.
	372	188		3	33-502.
July 12	509	221	II		32-403 note.
July 13	560	234			6-1014.

*Repealed pursuant to one of the revisions, enactments and reenactments specified in Tables 10, 11, 12, and 13. See those tables for disposition of all Code sections so repealed.

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	193	174		1	32-781.
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	193	174		3	32-783.
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	194	174		6	32-786.
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		174		12	32-790.
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June 1	267	224		1	35-1401.
	267	224		2	35-1402.
	267	224		3	35-1403.
	268	224		4	35-1404.
	268	224		5	35-1405.
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June 8	271	238		1	5-106.
	271	238		2	5-108.
June 14	279	258			36-434.
June 28	512	300		1	1-263 note.
	513	300		1	31-716a note.
	515	300		1	31-812.
	517	300		1	4-413.
	518	300		1	32-327 note.
	519	300		1	33-111 note.
	519	300		1	32-321 note.
	522	300		1	47-131. note.
	526	300		1	7-603.
	526	300		1	40-808 note.
	526	300		1	40-604 note.
	527	300		1	40-603a.
	530	300		2	7-1235.
	530	300		2	46-303a.
	531	300		2	7-1236.
	531	300		3	7-1237.
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	532	300		6	1-243.
	532	300		7	1-310a.
	532	300		8	40-603b.
	533	300		12	1-816a.
	533	300		13	1-242.
	533	300		14	47-2501.
	533	300		16	11-1519 Rep.*
	533	300		18	47-130a.
	561	302	II	1	32-403 note.
July 1	698	373	III	341	24-613.
		373	III	345	24-614.
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Dec. 15	806	589		1	40-301.
Dec. 16	808	595		1	40-804.
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	809	595		3	40-808.
	810	597		1	1-501.
	811	597		2	1-504.
	811	597		4	1-517.
Dec. 20	811	597		5	1-518.
	817	610		1	15-401 Rep.*
	818	610		2	15-403 Rep.*
	819	610		3	28-2505 Rep.*
	819	610		4	16-312 Rep.*
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	826	612		15	2-1224.
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	97	99		3	10-111.
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	99	99		5	10-124a.
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Apr. 28	100	102			32-615.
	100	102			32-616.
May 3	121	106	I	1	5-105a note.
June 30	274	209		1	1-263 note.
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	280	209		1	4-413.
	281	209		1	11-1521 Rep.*
	282	209		1	33-111 note.
	282	209		1	32-321.
	282	209		1	32-322 note.
	282	209		1	32-327 note.
	285	209		1	47-131 note.
	289	209		1	7-603 note.
	289	209		1	40-808 note.
	289	209		1	40-604 note.
	293	209		7	1-250.
	294	209		8	47-135 note.
July 2	311	217			24-301.
	313	222			40-603.
	315	224			2-408.
July 3	366	263	II		32-318a.
	372	263	II		32-403 note.
July 5	409	267		1	47-2001.
	409	267		2	47-2003.
	409	267		3	1-230.
	410	268		1	5-106.
	410	268		2	5-108.
	411	270			3-107 note.
July 14	471	303		3	4-805.
	471	303		4	4-803 note.
Oct. 29	551	439		2	32-316a.
Oct. 31	552	443	I	101-108	1-101 note.
	554	443	II	201	1-101 note.
Nov. 30	588	497			29-603.
	589	501			47-801b-1.
Dec. 3	592	514			45-1601.
Dec. 15	610	578			40-712.
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May 1	159	245		1	45-1701 note.
	159	245		2	45-1701.
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May 9	169	249		1	6 1015.

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June 24	303	462		1	47-1601.
	303	462		2	47-1601 note.
June 26	319	503		1	5-106.
	319	503		2	5-108.
June 27	320	507		1	24-441.
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	321	507		3	24-443.
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June 29	340	521			45-1601.
July 9	503	544		1	1-263 note.
	505	544		1	31-716a,
	509	544		1	4-413.
	511	544		1	11-1521 Rep.*
	511	544		1	33-111 note.
	511	544		1	32-322.
	511	544		1	32-327 note.
	518	544		1	7-603 note.
	518	544		1	40-808 note.
	518	544		1	40-604 note.
	523	544		7	1-250.
July 11	527	557			46-303.
July 13	534	576			28-616 Rep.*
July 26	687	672	II		32-318a.
	693	672	II	201	32-403 note.
July 29	708	693		1	31-622a.
July 31	718	707		1	9-118.
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	718	707		3	9-120.
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	720	707		13	9-130.
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Aug. 2	790	736		2	5-701.
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	793	736		4	5-703.
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	797	736		8	5-707.
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	799	736		13	5-712.
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	860	758		1	45-712.
	861	758		2	45-713.
Aug. 7	875	779		1	31-721.
	876	779		2	31-722.
	876	779		3	31-723.
	877	779		4	31-724.
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	889	792			19-403 Rep.*
Aug. 8	919	871		1	6-118.
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June 26	181	149		1	43-1531a.
	182	149		2	43-1531b.
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July 1	240	193		1	4-902.
	240	193		2	4-903.
July 8	265	210	II		32-318a.
	272	210	II	201	32-403 note.
July 11	311	226		1	4-182.
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July 16	331	258	(ART I) I	1	47-1551.
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	331	258	I	3	47-1551b.
	332	258	I	4	47-1551c.
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	347	467			31-716a note.
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*Repealed or transferred pursuant to one of the revisions, enactments and reenactments specified in Tables 10, 11, 12, and 13. See those tables for disposition of all Code sections so repealed.

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July 18	347	467			40-604, 808 notes.
	347	467		1	33-111 note.
	356	467		1	32-327 note.
	369	467		9	47-135 note.
Aug. 1	393	513		1	1-230.
	393	513		1	2-103, 201, 309, 324, 701, 706, 709.
	393	513		1	6-101, 102, 104, 105, 106, 107, 108, 109, 113, 115, 116, 119a to 119f, 119h, 119j, 201, 202, 301, 302, 303, 401, 602, 604, 606, 607, 608, 702, 901.
	393	513		1	7-301.
	393	513		1	22-2703, 3304, 3418.
	393	513		1	27-119a, 120, 123, 125.
	393	513		1	31-724, 725.
	393	513		1	32-302, 316.
	393	513		1	33-104. 105, 302, 303, 305, 306, 307, 309, 312, 313, 315, 316, 317, 318, 401, 502.
	393	513		1	47-2316.
Aug. 7	416	602		1-3	28-714a.
Aug. 11	438	686		1	6-1201.
	438	686		2	6-1202.
	439	686		3	6-1203.
	440	686		4	6-1204.
	440	686		5	6-1205.
	440	686		6	6-1206.
Aug. 14	441	706		1	4-414.
	441	706		2	4-414.
	441	706		3	4-414.
	441	706		4	4-414.
Aug. 15	447	715		1	4-904.
Aug. 16	450	720		1	31-1301.
	450	720		2	31-1302.
	451	720		3	31-1303.
Aug. 19	466	762		1	2-1210.
	466	762		2	2-1226.
Sept. 1	576	836		2	47-1601.
	576	836		3	47-1208.
	576	836		4	47-1208 note, 47-1601 note.
Sept. 6	712	896	VIII	801	5-105a note.
Sept. 7	770	905		1	7-1401.
	771	905		2	7-1402.
	771	905		3	7-1403.
	771	905		4	7-1404.
	771	905		5	7-1405.
	771	905		6	7-1406.
	772	905		7	7-1407.
	772	905		8	7-1408.
	772	905		9	7-1409.
	772	905		10	7-1410.
	772	905		11	7-1411.
	773	905		12	7-1412.
	780	908		1	2-1010.
	780	908		2	2-1014.
	781	908		3	2-1016 to 1027 1030.
	784	908		7	2-1019.
	784	908		8	2-1019, 1031.
Sept. 8	791	921		1	40-101.
	792	921		2	40-101.
	792	921		3	40-102.
	793	921		4	40-103.
	793	921		5	40-103.
	793	921		6	40-103.
	794	921		7	40-104.
Sept. 19	854	953		1	2-1801.
	854	953		2	2-1802.
	855	953		3	2-1803.
	855	953		4	2-1804.
	855	953		5	2-1805.
	856	953		6	2-1806.
	856	953		7	2-1807.
	856	953		8	2-1808.
	862	953		9	2-1809.
	863	953		10	2-1810.
	864	953		11	2-1811.
	864	953		12	2-1812.
	864	953		13	2-1813.
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	866	953		18	2-1818.
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	904	984		2	5-802.
	904	984		3	5-803.
	904	984		4	5-804.
	904	984		5	5-805.
	904	985		1	27-119a.
Sept. 28	1076	1091		1	31-699.
	1077	1091		2	31-699a.
	1077	1091		3	31-699b.
Dec. 20	1114	1141		1	31-694a.
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	1240	1225		4	11-952 Rep.*
	1240	1225		5	11-953 Rep.*
	1241	1225		6	11-954 Rep.*
	1241	1225		7	11-955 Rep.*
	1241	1225		8	11-956 Rep.*
	1241	1225		9	11-957 Rep.*
	1241	1225		10	11-958 Rep.*
	1242	1225		11	11-959 Rep.*
	1242	1225		12	11-960 Rep.*
	1242	1225		13	11-961 Rep.*
	1242	1225		14	11-962 Rep.*
	1243	1225		15	11-963 Rep.*
	1243	1225		16	11-964 Rep.*
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	1243	1225		18	11-966 Rep.*
	1243	1225		19	11-967 Rep.*

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Mar. 27	27	20		1	4-904. note.
May 21	44	102		1	6-1202a.
June 30	98	192		1	45-1601.
	99	192		1	45-1602.
	100	192		1	45-1603.
	100	192		1	45-1604.
	102	192		1	45-1605.
	103	192		1	45-1606.
	103	192		1	45-1607.
	104	192		1	45-1608.
	104	192		1	45-1609.
	105	192		1	45-1610.
	106	192		1	45-1611.
	106	192		1	45-1601 note.
	107	192		1	45-1601 note.
	107	192		1	45-1601 note.
	107	192		2	45-1601 note. note.
July 27	124	241		1	6-1301.
	124	241		2	6-1302.
	124	241		3	6-1303.
	124	241		4	6-1304.
July 30	124	246		1	47-112a.
	125	246		2	47-120a.
	125	246		3	47-112b, 120a note.
	125	246		4	47-112b note, 120b.
	125	246		5	47-112a note.
	126	247		1, 2	47-2331.
	126	248		2	7-213a, 322 note.
	127	249		1	2-710.
	127	250		1	47-113a.
	127	250		2	47-113b.
	127	250		3	47-113c.
	128	251		1	2-1112.
	128	251		2	2-1114.
	128	251		3	2-1114a.
July 31	131	274		1	1-904.
	131	274		2	1-906.
Aug. 1	150	283		1	9-401 to 404.
Aug. 3	154	291		1	32-908 note, 908a.
	154	291		2	32-908b.
	154	291		3	32-908.
	154	291		4	11-915 Rep.*
	158	292		1	31-716a note.
	160	292		1	4-413.
	160	292		1	11-722a Rep.*
	160	292		1	See 15-713.
	161	292		1	32-327.
	161	292		1	32-328.
	161	292		1	32-329.
	161	292		1	33-111 note.
	166	292		1	7-603.
	167	292		1	40-604 note.

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	172	292		11	24-447.
	173	292		8	47-135 note.
Aug. 31	278	376	I	101	5-105a note.
Sept. 15	323	404		1	26-404.
	323	404		2	26-405.
	324	404		3	26-103.
	324	404		4	26-404a.
Oct. 8	367	448		1	31-1401.
	367	448		2	31-1402.
	368	448		3	31-1403.
	369	448		5	31-1404.
	369	448		6	31-1405.
	369	448		7	31-1406.
	370	448		8	31-1407.
	370	448		9	31-1408.
	370	448		10	31-1401 note.
	370	448	II	201	31-1409.
	370	448	II	202	31-1410.
Oct. 24	607	544		1	4-807.
	607	544		2	4-808.
	607	544		3	4-809.
	608	545		1	21-501 Rep.*
	608	545		2	21-501 Rep.*
	608	545		3	21-503 Rep.*
	608	545		4	21-504 Rep.*
	608	545		5	21-505 Rep.*
	609	545		6	21-506 Rep.*
	609	545		7	21-507 Rep.*
Oct. 25	636	560		1 (a)	4-806.
	637	560		2	1-251.
Oct. 29	660	601		1	31-691.
	660	601		2	31-692.
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	14	82		1	23-801 note.
	15	82		2	23-801.
	15	82		3	23-802.
	15	82		4	23-803.
	16	82		5	23-804.
	16	82		6	23-801 note.
Mar. 6	17	95		1	31-721.
	17	95		2	31-723.
	17	95		3	31-724.
	17	95		4	31-725.
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	22	95		10	31-725a.
	22	95		11	31-721 note.
Mar. 14	24	103		1	29-216.
	24	104		1	11-1509 Rep.*
Apr. 15	59	206		1	15-403 Rep.*
June 3	96	361		1	38-204.
	97	361		2	38-205.
	97	361		3	38-206.
	97	361		4	38-207.
	97	361		5	38-208.
	98	361		6	38-209.
June 4	100	365		1	40-704.
	100	365		2	40-708.
	100	365		3	40-713.
	100	366		1	47-1901.
	100	366		2	47-1912.
	100	366		4	47-1901 note.
June 5	126	370		1	42-101 Rep.*
	126	370		1	42-103 Rep.*
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	126	370		3	42-104.
	126	370		3	42-105 Rep.*
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	126	370		3	42-107.
	127	370		4	40-711.
	128	370		5	45-708.
	128	370		6	42-101 note.
June 9	129	373		1	45-701.
	129	373		2	45-702.
	129	373		3	45-703.

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	287	486		1	32-323.
	288	486		2	32-324.
	288	486		3	32-325.
July 3	329	569		1	36-207a.
July 4	404	587	I	101	5-105a note.
July 5	375	576		1	31-716a.
	379	576		1	4-413.
	379	576		1	See 15-713.
	380	576		1	33-111 note.
	385	576		1	7-603 note.
	385	576		1	40-604 note.
	390	576		8	47-135 note.
	391	576		11	1-263 note.
	391	576		11	8-211a.
	391	576		11	24-447.
	392	577		1	2-1213.
	392	577		2	2-1218.
	393	577		3	2-1219.
July 10	543	649		1	47-1408.
	543	649		2 (a)	47-1619.
	543	649		2 (b)	46-304.
	543	649		2 (c)	47-2624.
	543	649		2 (d)	47-1538.
	543	649		2 (d)	47-1540.
	543	649		2 (d)	47-1541.
	543	649		3 (a)	47-2403.
	544	649		3 (b)	47-2404.
	544	649		3 (c)	47-708.
	544	649		3 (c)	47-709.
	544	649		3 (c)	47-2405.
	545	649		3 (c)	47-710.
	545	649		3 (c)	47-711.
	546	649		4	47-2413.
	547	649		5	47-2402.
	547	649		6	46-304.
	547	649		7	47-2414.
	548	649		8	47-1619 note.
July 17	766	941		1	22-3102.
July 19	781	949		1	1-1001.
	782	949		1	1-1002.
	785	949		1	1-1004.
	787	949		1	1-1005.
	789	949		1	1-1006.
	789	949		1	1-1007.
	790	949		1	1-1008.
	790	949		1	1-1009.
	790	949		1	5-417, 420, 428 notes;
	790	949		1	6-505 note.
	790	949		1	7-109, 401, 1218, 1402 notes.
	790	949		1	8-103-105, 115, 120-122, 165, 166, 169, 210 notes.
	790	949		1	9-204, 208, 301, 304, 401 notes.
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	791	949		1	1-1010.
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June 5	43	101		1	1-252.
	43	101		2	1-253.
June 18	64	126		1	42-104.
	65	128		1	11-757 Rep.*
	65	128		1	11-942a Rep.*
	65	128		1	11-968 Rep.*
	66	130		1	11-735 Rep.*
	66	131		1	20-116 Rep.*
June 20	75	146	III	301	4-518.
	75	146	III	302	4-519.
	76	146	IV	403	4-904.
	76	146	IV	405	4-821.
June 24	77	149		1	24-601.
	77	149		2	24-602.
	77	149		3	24-603.
	78	149		4	24-604.
	78	149		5	24-605.
	78	149		6	24-606.
	78	149		7	24-607.
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	79	149		9	24-609.

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June 29	90	159		1	24-203 note.
	91	159	II	201(a)	24-203.
	92	159		201(b)	24-201c.
	92	159		202(a)(1)	22-1112.
	93	159		202(a)(2)	22-109.
	93	159	II	202(b)	22-2701.
	93	159		203	22-201.
	93	159		204(a)	22-3203 note.
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	95	159		205	22-505.
	95	159		206(a)	22-1502.
	95	159		206(b)	22-1505.
	96	159		206(c)	22-1508.
	96	159		206(d)	22-1514.
	96	159	II	207	23-306.
	97	159	II	208	22-1515.
	97	159	II	209(a)	22-3601.
	97	159	II	209(b)	22-3302
	97	159		210	22-1107.
	98	159		211(a)	22-1121.
	98	159		211(b)	22-109.
	98	159		212	11-755d Rep.*
	98	159		212	22-507.
	98	159		213	22-2205.
	99	159		214	22-1002.
	99	159		215(a)	22-2201.
	99	159		215(b)	22-2204a.
	99	159		215(c)	22-2202.
	99	159		215(d)	22-2208.
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	100	159	III	302	4-134a.
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	101	159		401	2-1901.
	102	159		402	23-115.
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	107	159	IV	408	11-1417 Rep.*
	108	159	IV	409	1-319.
	108	159		410	11-748a, 756 Rep.*
June 30	120	168			35-1336.
	120	168			35-1303.
July 6	139	179		1	6-1202a, 6-1202b.
July 16	162	196		1	35-712.
	172	196		2	35-302.
	172	196		3	35-712 note.
July 20	182	231		1	4-821.
July 31	279	299		1	31-716a.
	283	299		1	See 15-713.
	284	299		1	4-413 note.
	284	299		1	33-111 note.
	290	299		1	7-603 note.
	290	299		1	40-604 note.
		299		8	47-135 note.
	295	299		11	10-103a note.
	295	299		11	8-211a note.
	295	299		11	4-185 note.
	295	299		11	24-447 note.
	309	302	I	101	5-105a note.
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	80	195		3	24-613.
	81	195		4	24-615.
May 18	101	218	I	101	43-1520c.
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	108	218	II	211	43-1610.
	108	218	II	212	43-1611.
	108	218	II	213	43-1612.
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	109	218	II	215	43-1614.
	109	218	II	216	43-1615.
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	109	218	II	218	43-1617.
	109	218	II	219	43-1605 note.
	109	218		301	43-1511.
	109	218		302	43-1511.
	110	218	IV	401	7-132.
	110	218	IV	402	7-133.
	110	218		501	7-901.
	111	218	VI	601	40-102.
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	112	218	VI	610	47-1208, 47-1209 notes.
	113	218	VII	701	47-2501a.
	113	218	VII		47-2501b.
	113	218		801	25-124.
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	115	218	IX	902-905	47-2802 note.
	115	218	IX	901	47-2802.
	116	218	X	1001	47-1208.
	116	218	X	1002	47-1208.
	116	218	X	1103	47-1203.
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Aug. 3	650	653		1	45-714.
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July 25	638	720	----------	1	7-1214.
	639	720	----------	2	7-1215.
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Aug. 6	1036	970	----------	1	2-2001.
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June 27	196	85-61		1	See 15-713.
	197	85-61		1	33-111 note.
	204	85-61		1	7-603 note.
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July 3	276	85-82		1	47-2605.
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July 10	278	85-87		2	2-2101.
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Aug. 14	345	85-129		1	4-182.
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Aug. 21	399	85-157		5 (1)	4-503 note.
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Aug. 31	560	85-244		1	18-101 Rep.*
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Sept. 2	569	85-254		1	29-905.
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Sept. 4	605	85-281		1	47-1557a.
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Sept. 7	619	85-300		2	2-1720.
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	68	85-356		10	18-909 Rep.*
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Apr. 24	98	85-385		1	31-696a.
May 22	132	85-423		1	25-116.
June 6	183	85-451		1	9-220.
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June 20	216	85-463		2	24-102 Rep.*
July 2	292	85-491		1	1-244.
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July 11	354	85-511		1	7-1412.
July 18	377	85-533		3	1-260.
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July 25	414	85-552		2	1-204b.
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July 28	421	85-561		1 (1,2)	2-1720.
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Aug. 18	618	85-670		1	1-261.
Aug. 20	686	85-692		1	40-804.
	686	85-693		1	4-524.
Aug. 21	702	85-703		2	1-817c note.
Aug. 23	807	85-726	XIV	1402(g)	7-1401 to 7-1411
Aug. 23	814	85-730		1	22-1628.
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Aug. 28	952	85-792		1	44-301 note.
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	1102	85-854		1 (1) (2) (3)	5-702.
	1103	85-854		1 (4—11)	5-706.
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Sept. 2	1735	85-901		1	31-1405.
	1768	85-917		1	31-741.
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July 13	181	86-83			29-204.
July 17	222	86-98		1	2-308.
July 21	223	86-101		1	1-239.
July 23	229	85-104		1	See 15-713.
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	235	86-104		1	47-139.
	238	86-104		7	1-263 note.
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July 23	242	86-106		13	29-933d.
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Aug. 4	275	86-130		1(1104A(a))	15-314 Rep.*
	275	86-130		1(1104A(b))	15-315 Rep.*
	276	86-130		1(1104A(c))	15-316 Rep.*
	276	86-130		1(1104A(d,e,f)	15-317 Rep.*
	276	86-130		1(1104A(g))	15-318 Rep.*
	277	86-130		1(1104A(h,i,j))	15-319 Rep.*
	277	86-130		2	15-304 Rep.*
	277	86-130		3	15-312 Rep.*
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Sept. 14	509	86-255	I	101	5-105a note.
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Sept. 21	573	86-298		1	Special.
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Sept. 22	640	86-356			4-183a.
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	702	86-378		1(2,3)	2-1721.
	702	86-378		1(4,5)	2-1723.
	702	86-378		1(6,7)	2-1724.
	702	86-378		1(8)	2-1728.
	702	86-378		1(9)	2-1729.
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	21	86-412		1	11-749 Rep.*
	21	86-412		1	33-111.
	30	86-412		7	1-263.
Apr. 22	30	86-412		15	9-501.
	68	86-430		1	47-832.
	69	86-431		1	40-901.
	69	86-431		2	40-902.
	71	86-431		3	40-903.
	72	86-431		4	47-2345.
	73	86-431		5	40-904.
	73	86-431		6	40-905.
	73	86-431		7	40-906.
	73	86-431		8	40-907.
	73	86-431		9	40-908.
	73	86-431		10	40-909.
	73	86-431		11	40-910.
	73	86-431		12	40-901 note.
	78	86-436		*	29-204.
	196	86-502		7	26-610.
June 11	202	86-507		1(42)	5-310.
	202	86-507		1(43)	5-315.
	202	86-507		1(44)	5-321.
	203	86-507.		1(45)	7-221.
	203	86-507		1(46)	11-805 Rep.*
	203	86-507		1(48)	35-423.
	203	86-507		1(49)	35-1327.
	203	86-507		1(50)	45-1409.
	203	86-507		1(51)	45-1410.
	203	86-507		1(52)	47-1003.
	203	86-507		1(53)	47-1012.
	203	86-507		1(54)	47-1586d.
	203	86-507		1(55)	47-1903.
	204	86-507		1(56)	47-2413.
June 12	210	86-515		1	43-1620.
	210	86-515		2	43-1621.
	211	86-515		3	43-1622.
	211	86-515		4	43-1623.
	211	86-515		5	43-1624.
	218	86-520		1	35-541.
June 27	219	86-522		1	47-1557a.
	219	86-522		2	47-1557a note.
	221	86-524		1, 2	6-301.
	222	86-525			31-745.
	222	86-526		1	35-1323.
	223	86-527		1	1-1301 note.
	223	86-527		2	1-1301.
	223	86-527		3	1-1302.
	223	86-527		4	1-1303.
	223	86-527		5	1-1304.
	224	86-527		6	1-1305.
	224	86-528		1	47-2413.
	227	86-530		1	35-701.
	227	86-530		2	35-705b.
	229	86-531		2	2-2201.
	229	86-531		3	2-2202.
	230	86-531		4	2-2203.
	230	86-531		5	2-2204.
	230	86-531		6	2-2205.
	230	68-531		7	2-2206.
	231	86-531		8	2-2207.
	231	86-531		9	2-2208.
	231	86-531		10	2-2209.
	231	86-531		11	2-2209.
July 5	315	86-579		1—5	35-710.
	322	68-584		1	28-2321 Rep.*
	322	68-584		2	28-2322 Rep.*
	322	86-584		3	28-2323 Rep.*
	323	86-584		4	28-2324 Rep.*
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July 5	323	86-584		5	28-2325 Rep.*
	323	86-584		6	28-2326 Rep.*
	324	86-584		7	28-2327 Rep.*
	324	86-584		8	29-2328 Rep.*
	324	86-584		9	28-2329 Rep.*
	324	86-584		10	28-2330 Rep.*
July 12	436	86-626	I	101	5-105a note.
July 14	519	86-654		2	1-921.
	519	86-654		3	1-922.
	519	86-654		4	1-923.
	520	86-654		5	1-924.
	520	86-654		6	1-925.
	520	86-654		7	1-926.
	520	86-654		8	1-921 note.
	536	86-668		1	33-410.
	537	86-669	I	101	1-1401 note.
	537	86-669	I	102	1-1401.
	537	86-669	I	103	1-1402.
	538	86-669	II	201	1-1403.
	539	86-669	II	203	1-1405.
	539	86-669	II	204	1-1406.
	541	86-669	II	205	1-1407.
	544	86-699	III	301	1-1408.
	545	86-669	III	302	1-1409.
	553	86-674		1	19-309 Rep.*
Sept. 6	791	86-705		1	47-833.
	791	86-706		2	47-833 note.
	802	86-708		1	2-421 note.
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	803	86-708		4	2-423.
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	806	86-708		15	2-434.
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	807	86-708		17	2-436.
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	807	86-708		19	2-438.
	807	86-708		20	2-439.
	807	86-708		21	2-440.
	807	86-709		1	47-834.
	807	86-709		2	47-834 note.
	811	86-711			43-1613.
	812	86-711			43-1616.
	815	86-715		1	2-2301.
	815	86-715		2	2-2302.
	816	86-715		3	2-2303.
	816	86-715		4	2-2304.
	816	86-715		5	2-2305.
	816	86-715		6	2-2306.
	816	86-715		7	2-2307.
	816	86-716		1	40-103.
	817	86-716		2, 3	40-103.
Sept. 8	853	86-725		1	31-307 note.
	853	86-725		2	31-307.
	853	86-725		3	31-308.
	854	86-725		4	31-309.
	854	86-725		5	31-310.
	854	86-725		7	31-311.
	854	86-725		8	31-307 note.
	856	86-727		1	47-835.
	862	86-730		1	40-419.

*Repealed pursuant to one of the revisions, enactments and reenactments specified in Tables 10, 11, 12, and 13. See those tables for disposition of all Code sections so repealed.

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	862	86-730		6	40-474.
	862	86-730		7	40-498c.
	866	86-731		1	35-535.
	866	86-731		2	35-535 note.
	868	86-734		2	4-823b.
	871	86-736		1	5-720.
	871	86-736		2	5-721.
	871	86-736		3	5-722.
	871	86-736		4	5-723.
	872	86-736		5	5-724.
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Sept. 8	872	86-736		7	5-726.
	872	86-736		8	5-727.
Sept. 13	881	86-743		1	1-244.
	913	86-773		1	31-1501.
	913	86-773		2	31-1502.
Sept. 13	916	86-776		1	31-1033.
	917	86-776		2	31-1034.
	917	86-776		4	31-1027.
	917	86-776		5	31-1033 note.
	1031	86-794		1	1-1410.
	1050	86-794		2	1-1411.
	1050	86-794		3	1-1412.
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June 30	197	87-79		1	Special.
Aug. 17	534	89-128	I	101	5-105a note.
Sept. 6	470	87-203		1	11-804(a) Rep.*
Sept. 13	497	87-226		1	Special.
	498	87-227		1	1-224b.
	498	87-227		2(1)	47-2003.
	498	87-227		2(2)	47-2004.
	498	87-227		3	1-224.
	498	87-227		4	1-224b note.
Sept. 14	510	87-238		1	125-124(c) Rep.
	510	87-238		2	25-124(c) Renumbered.
	511	87-238		3	25-124(e)(f)(i)(j) Rep.
	511	87-238		3	Rep.
	511	87-238		3	25-124(d)(e) Renumbered.
	511	87-238		4	25-124(f) Renumbered.
	511	87-238		5	25-124(g).
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	511	87-238		8	25-124 note.
	511	87-238		9	25-124 note.
	513	87-242		1	11-755(a) Rep.*
	514	87-245		1	35-535.
	515	87-246		2	18-101 Rep.*
	515	87-246		3	18-201a Rep.*
	516	87-246		4	18-211 Rep.*
	517	87-246		5	18-204 Rep.*
	517	87-246		6	30-201.
	518	87-248		1	2-103a.
	518	87-248		2	2-122.
	519	87-248		3	2-141.
	519	87-249		1	35-710.
Sept. 21	540	87-259		1	22-1505.
	540	87-259		2	22-1505 note.
	542 to 544	87-262		1, 2, 3, 4, 5, 6, 7, 8.	32-317 to 32-320 notes.
	564	87-265		7	1-263 note.
	564	87-265		10	40—503 note.
	564	87-265		15	9-501, 33-111 notes. See also 15-713.
	565	87-267		1	22-3401 Omitted.
	565	87-267		1	22-3402 Rep.
	565	87-267		1	22-3403 Rep.
Sept. 22	578	87-280		1	2-451 note.
	578	87-280		2	2-451.
	578	87-280		3	2-452.
	578	87-280		4	2-453.
	579	87-280		5	2-454.
	579	87-280		6	2-455.
	579	87-280		7	2-456.
	580	87-280		8	2-457.
	580	87-280		9	2-458.
	580	87-280		10	2-459.
	580	87-280		11	2-460.
	581	87-280		12	2-461.
	581	87-280		13	2-462.
	582	87-280		14	2-463.
	582	87-280		15	2-464.
	582	87-280		16	2-465.
	582	87-280		17	2-465.
	582	87-280		18	2-467.
	583	87-280		19	2-468.
	583	87-280		20	2-469.
	583	87-280		21	2-470.
	583	87-280		22	2-471.
	853	87-280		23	2-472.
	583	87-281		1	5-405.
Sept. 26	681	87-318		1	14-310 Rep.*
	686	87-325		1	7-1218 note.
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Oct. 4	769	87-349		1	11-1507 Rep.*
	769	87-349		2	11-1519 Rep.*
	776	87-355		1	Special.
	778	87-358		1	Special.
	783	87-364		1—3	Special.
	787	87-367		103(4)	1-1407.
	789	67-367	I	104	1-1407 note.
	817	87-389	I	1(1)	1-1101.
	817	87-389		1(2)	1-1103.
	817	87-389		1(3)	1-1105(a).
	817	87-389		1(4)	1-1105(a).
	817	87-389		1(5)	1-1105(b)(c).
	817	87-389		1(6)	1-1105(a).
	817	87-389		1(7)	1-1106(c).
	817	87-389		1(8)	1-1107(a).
	818	87-389		1(9)	1-1107(b).
	818	87-389		1(10)	1-1107(c).
	818	87-389		1(11)	1-1107(d).
	818	87-389		1(12)	1-1108(a).
	818	87-389		1(13)	1-1108(d, e, f, g).
	819	87-389		1(14)	1-1109(a).
	819	87-389		1(15)	1-1109(b).
	819	87-389		1(16)	1-1109(e).
	819	87-389		1(17)	1-1109(g).
	819	87-389		1(18)	1-1110(a).
	819	87-389		1(19)	1-1110(b).
	819	87-389		1(20)	1-1110(d).
	819	87-389		1(21)	1-1113(b).
	819	87-389		1(22)	1-1113(d).
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	820	87-389		1(26)	1-1102.
	820	87-389		2	1-1101 note.
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Oct. 5	830	87-399		1	4-404a.
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	831	87-399		4	4-807.
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	832	87-399		6	4-408a.
	832	87-399		7	4-404a notes. 4-408a notes.
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Mar. 2	14	87-408	III	310	45-730.
	15	87-408	III	311	45-731.
	15	87-408	III	312	45-732.
	15	87-408	III	313	45-733.
	15	87-408	III	314	45-734.
	16	87-408	III	315	45-735.
	16	87-408	III	316	45-736.
	16	87-408	III	317	45-737.
	16	87-408	III	318	45-738.
	16	87-408	III	319	45-739.
	16	87-408	III	320	45-740.
	16	87-408	III	321	45-741.
	10	87-408	I	101(a)	47-2602.
	10	87-408	I	101(b)(c)	47-204.
	10	87-408	I	102	47-2702.
	10	87-408	I	103	47-2602 note.
	10	87-408	II	201	47-1586f.
	10	87-408	II	202	47-1586f note.
	11	87-408	III	301	45-721.
	11	87-408	III	302	45-722.
	12	87-408	III	303	45-723.
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	17	87-408	III	323	45-743.
	17	87-408	III	324	45-744.
	17	87-408	III	325	45-721 note.
	17	87-408	III	326	45-721 note.
	17	87-408	IV	401	25-124.
	17	87-408	IV	402	25-121 note.
	17	87-408	V	501	43-1520c.
	18	87-408	V	502	43-1606.
	18	87-408	V	503	43-1607.
	18	87-408	V	504	43-1520c.
	18	87-408	VI	601	40-808.
	18	87-408	VI	602	40-809.
	18	87-408	VI	603	40-801; 40-809a.
	19	87-408	VI	604	40-808 note.
Mar. 9	21	87-413	----	1	11-920 Rep.*
	22	87-413	----	2	Omitted.
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	22	87-413	----	3(b)	11-904, 11-928 Rep.*
	22	87-413	----	3(c)	11-923, 11-925 Rep.*
	22	87-413	----	3(d)	11-906, 11-914, 11-927, 11-937 Rep.*
	22	87-413	----	3(e)	11-924 Rep.*
	22	87-413	----	3(f)	11-929(b) Rep.*
	22	87-413	----	3(g)	11-942. Rep.*
	22	87-413	----	4	11-922 Rep.*
	22	87-413	----	5	11-942-1 Rep. *
	22	87-413	----	6	Omitted. See similar prov., 11-1501 note.
Mar. 22	46	87-423	----	1	22-2404.
Mar. 30	46	87-424	----	1	46-301(b)(5)(G).
	47	87-424	----	2	46-301.
	47	87-424	----	3	46-303(c)(1).
	47	87-424	----	4	46-303(c)(8)(i).
	48	87-424	----	5	46-303(c)(8).
	48	87-424	----	6	46-307(b)(c)(d).
	49	87-424	----	7	46-307(f).
	49	87-424	----	8	46-309.
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May 31	83	87-460	----	----	Special.
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June 28	113	87-507	----	2(2)	44-214a.
	113	87-507	----	2	44-214a note.
July 1	124	87-511	----	1	Special.
July 5	135	87-523	----	1 to 16	Special.
July 27	222	87-552	----	1	Special.
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	270	87-569	----	10	29-1010.
	271	87-569	----	11	29-1011.
	271	87-569	----	12	29-1012.
	271	87-569	----	13	29-1013.
	272	87-569	----	14	29-1014.
	272	87-569	----	15	29-1015.
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	273	87-569	----	18	29-1018.
	273	87-569	----	19	29-1019.
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Aug. 20	395	87-593	----	1	Special.
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	398	87-596	----	2(a)	11-920 Rep.*
	398	87-596	----	2(b)	11-920 Rep.*
	398	87-596	----	3	Omitted.
	402	87-601	----	1	4-539.
	402	87-601	----	2	4-539.
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Sept. 5	435	87-633	----		1-4 Special.
Sept. 10	534	87-656	----	1	2-251 note.
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Sept. 25	580	87-686	----	1	35-1601.
	580	87-686	----	2	35-1602.
	580	87-686	----	3	35-1603.
	581	87-686	----	4	35-1604.
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*Repealed pursuant to one of the revisions, enactments and reenactments specified in Tables 10, 11, 12, and 13. See those tables for disposition of all Code sections so repealed.

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	585	87-686		12	35-1612.
	585	87-686		13	35-1601 note.
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	589	87-691		1	4-156.
	589	87-691		2	4-159.
	591	87-691		3	4-156 last sentence repealed.
	591	87-691		4	4-160.
	591	87-691		5	4-160a.
	592	87-691		6	4-156 note.
	594	87-694		1	1-401 repealed.
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	596	87-697		3	4-821.
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	597	87-697		5	4-404a, 4-821, 4-408b notes.
	598	87-700		1	7-608.
	598	87-700		2	7-608 note.
	598	87-700		3	7-608 note.
Sept. 27	633	87-705		1(a)	46-303(c)(4)(i).
	633	87-705		1(b)	46-303(c)(5).
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	635	87-708		1	4-124.
	636	87-709		Enacting clause	41-301 note.
	636	87-709		1	41-301 note.
	636	87-709		2	41-301.
	636	87-709		3	41-302.
	636	87-709		4	41-303.
	636	87-709		5	41-304.
	636	87-709		6	41-305.
	637	87-709		7	41-306.
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	637	87-709		9	41-308.
	638	87-709		10	41-309.
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	639	87-709		14	41-313.
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	656	87-716		5	41-405.
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	711	87-738		1	35-701.
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	715	87-739		1	35-535.
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	715	87-740		1	35-711.
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	745	87-745		1	40-603.
Oct. 5	752	87-757		2	35-907.
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	765	87-767		1	1-1410a.
	766	87-767		3	1-1410a note.
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Oct. 15	914	87-807		1	3-201 note.
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	916	87-807		8	3-207.
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	919	87-807		24	3-201 note.
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	939	87-821		1(2)	21-226 Rep.*
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	941	87-821		1(5)	21-229 Rep.*
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	942	87-821		1(7)	21-231 Rep.*
	942	87-821		1(8)	21-232 Rep.*
	942	87-821		1(9)	21-233 Rep.*
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	957	87-830		1	11-306a Rep.*
Oct. 16	1071	87-837		1	22-3423.
	1071	87-837		2	22-3424.
	1071	87-837		3	22-3425.
Oct. 23	1131	87-855		1	35-710.
	1131	87-855		2	35-710.
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	1154	87-867		7	1-263 note.
	1154	87-867		10	40-503 note.
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	1155	87-867		15	9-501, note, 33-111 note. See also 15-713.
	1171	87-873		1	11-901 note.
	1171	87-873		2	11-755(a) Rep.*
	1171	87-873		3	11-756(a) Rep.*
	1172	87-873		4	11-756(c) Rep.*
	1172	87-873		5(b)(c)	11-1520a Rep.*
	1172	87-873		6	11-771a Rep.*
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	1232	87-881	I	101(4)	31-1521.
	1233	87-881	I	101(5)	31-1531(a).
	1233	87-881	I	101(6)	31-1531(b).
	1234	87-881	I	101(7)	31-1532(a).
	1234	87-881	I	101(8)	31-1533(a).
	1234	87-881	I	101(9)	31-1536.
	1234	87-881	I	101(10)	31-1542(a).
	1235	87-881	I	101(11)	31-1542(b).
	1235	87-881	I	101(12)	31-1543.
	1235	87-881	I	101(13)	31-1544.

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	1236	87-881	II	202(22)	31-739b.
	1237	87-881	II	203(a)	31-725.
	1237	87-881	II	203(b)	31-729(b)(1).
	1237	87-881	II	203(c)	31-729(b)(2).
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	76	88-57	.....	3	35-1339.
	77	88-60	.....	1	11-901 note.
	77	88-60	.....	2	11-755(a) Rep.*
	77	88-60	.....	3	11-756(a) Rep.*
	78	88-60	.....	4	11-756(c) Rep.*
	78	88-60	.....	5(b)(c)	11-1520a Rep.*
	78	88-60	.....	6	11-701 note.
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Aug. 5	117	88-85	.....	1	11-805.
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Aug. 27	130	88-104	.....	1	47-2501b.
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	137	88-111	.....	1(5)	29-903.
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	139	88-111	.....	1(10)	29-938d.
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	140	88-111	.....	3	29-903 note.
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Dec. 18	419	88-211	.....	1	47-140.
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	509	88-241	12	I	12-101 to 12-309.
	511	88-241	13	I	13-101 to 13-702.
	517	88-241	14	I	14-101 to 14-702.
	522	88-241	15	I	15-101 to 15-716.
	536	88-241	16	I	16-101 to 16-4102.
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	619	88-241	.....	17(c)	11-1501 note.
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Oct. 6	1004	88-629		1	5-728.
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Oct. 13	1055	88-644		1	11-1701.
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Sept. 25	839	89-203		1	7-525.
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Sept. 28	844	89-208		1	1-264.
Sept. 29	889	89-217		1	16-902.
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	890	89-217		4	16-920.
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Nov. 2	1180	89-317		1	5-733.
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*Repealed pursuant to one of the revisions, enactments and reenactments specified in Tables 10, 11, 12, and 13. See those tables for disposition of all Code sections so repealed.

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	960	89-682		7	30-118 note.
	961	89-684		1	36-401.
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	964	89-684		1	36-405.
	965	89-684		1	36-406.
	966	89-684		1	36-407.
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1306	729	26-317	1324	826	22-2201	1340	931	23-402	1382	1226	45-911		1608i	7-317
1307	730	26-318		826b	22-2204	1340	932	3-101 to 303	1383	1227	45-912		1608j	7-318
1307	731	26-319		826c	22-2204a	1340	932	6-901	1383	1228	45-914		1608k	7-320
1307	732	26-320	1324	827	22-2202	1340	932	23-101	1383	1229	45-915		1608l	7-321
1307	733	26-321	1324	828	22-2208	1341	933	23-102	1383	1230	45-916	1430	1610	7-323
1307	734	26-322	1324	829	22-2205	1341	935	23-105	1383	1231	45-917	1430	1611	7-325
1308	735	26-323		830a	22-1404	1341	936	24-404	1384	1234	45-932	1431	1612	7-326
1308	736	26-324	1324	831	22-2206	1341	937	24-405	1384	1235	45-909	1431	1613	7-327
1308	737	26-325	1325	832	22-2207	1341	938	23-106	1384	1236	45-908	1431	1614	7-328
1308	738	26-326	1325	833	22-1201	1342	939	23-104	1384	1237	38-101	1431	1615	7-329
1308	739	26-327	1325	834	22-1202	1342	940–	19-301 note	1384	1238	38-102	1431	1616	7-330
1308	740	26-328	1325	835	22-1203	1343	951		1384	1239	38-103	1432	1617	45-1201
1308	741	26-329	1325	836	22-1204	1343	956	45-817	1384	1240	38-104	1432	1618	45-1203
1308	742	26-330		836a	22-108	1350	1011	45-801	1385	1241	38-105	1434	1636	49-304 note,
1309	743	26-331	1325	837	22-1205	1350	1012	45-802	1385	1242	38-106		1636,	49-303
1309	744	26-332	1325	838	22-1206	1351	1013	45-803	1385	1243	38-107		par. 9	
1309	745	26-333	1326	839	22-1209	1351	1014	45-804	1385	1244	38-108	1435	1637	49-304 note
1309	746	26-334	1326	840	22-1405	1351	1015	45-805	1385	1245	38-109	1435	1638	49-304 note
1309	747	26-335	1326	841	22-1210	1351	1016	45-806	1386	1246	38-110	1436	1639	49-304 note
1309	748	26-336	1326	842	22-1301	1351	1017	45-807	1386	1247	38-111	1436	1640	49-304 note
1310	749	35-901	1326	843	22-1401	1351	1018	45-808	1386	1248	38-112	1436	1641	49-304 note
1310	750	35-902	1327	844	22-3107	1351	1019	45-809	1386	1249	38-113	1436	1642	49-304 note
1310	751	35-903	1327	845	22-1308	1351	1020	45-810	1386	1250	38-114	1436	1643	49-304 note
1311	752	35-904	1327	846	22-3119	1351	1021	45-811	1387	1251	38-115			
1312	753	35-905	1327	847	22-3108	1351	1022	45-812	1387	1252	38-116			
1312	754	35-906	1327	848	22-403	1351	1023	45-102	1387	1253	38-117			

Revision Tables

TABLE 10.—REVISION OF PART II

Showing disposition of sections of former Part II, Titles 11 to 17, inclusive, and a few sections of other titles, of the D.C. Code, as the result of the revision and reenactment of Part II by Act December 23, 1963, Public Law 88–241, 77 Stat. 478, effective January 1, 1964

Part II Former Sections	*Part II New Sections*
11–101	11–101.
11–102	Transf. to 2 U.S.C. 137c.
11–103	Transf. to 40 U.S.C. 129a.
11–104	Transf. to 40 U.S.C. 130.
11–105	Transf. to 40 U.S.C. 130a.
11–204	11–301.
11–206	11–302, 11–341.
11–207	11–341.
11–211	Repealed.
11–301	16–1302.
11–303	Omitted.
11–305	11–521.
11–306	11–521.
11–306a	Omitted. See 33 U.S.C. 466g-1.
11–308	11–521.
11–312	11–501.
11–319	13–701.
11–321	Omitted.
11–326	15–320.
11–327	15–321.
11–328	15–322.
11–329	Repealed.
11–330	Transf. to 47–126a.
11–332	11–503.
11–401	11–502.
11–501	11–522.
11–502	Repealed.
11–503	11–522.
11–504	11–522, 16–3102.
11–505	11–541.
11–506	16–3103.
11–507	Repealed.
11–508	16–3104.
11–509	16–3105.
11–510	16–3106.
11–511	Repealed.
11–512	16–3107.
11–513	16–3108.
11–514	16–3109.
11–515	16–3110.
11–516	Repealed.
11–517	Repealed.
11–518	16–3113.
11–519	16–3111.
11–520	16–3112.
11–601	Repealed.
11–609	Repealed.
11–610	Repealed.
11–619	Repealed.
11–620	Repealed.
11–621	Repealed.
11–623	Repealed.
11–624	Repealed.
11–701	Repealed.
11–702	Repealed.
11–703	11–961.
11–704	11–961.
11–705	11–981.
11–706	Repealed.
11–707	Repealed.
11–708	Repealed.
11–709	Repealed.
11–710	11–984.
11–710a	11–984.
11–710b	11–985.
11–710c	11–984.
11–711	11–932.
11–712	11–983.
11–713	11–931.
11–714	11–931.
11–715	13–702.
11–715a	16–702, 16–705, 16–706.
11–716	11–2301, 11–2306, 11–2309 to 11–2313.
11–716a	11–2301, 11–2306, 11–2311 to 11–2313, 16–705.
11–716b	11–2309, 11–2310, 11–2312, 11–2314.
11–717	Repealed. See 13–101.
11–718	15–131, 15–132.
11–719	15–711.
11–720	15–712.
11–721	11–2314.
11–722	15–709.
11–722a	15–713.
11–724	15–131.
11–724a	16–709.
11–725	16–3731 to 16–3733.
11–726	16–3734.
11–727	16–3735, 16–3736.
11–728	Repealed. See 13–101.
11–729	16–3737.
11–730	16–3738.
11–731	16–3739.
11–732	16–3740.
11–733	16–533.
11–734	Repealed.
11–735	16–1501.
11–736	16–1502.
11–737	16–1503.
11–738	16–1504.
11–739	16–1505.
11–740	Repealed. See 11–982.
11–741	14–104.
11–742	15–133.
11–743	15–132.
11–744	15–521.
11–745	15–522.
11–746	15–523.
11–747	15–524.
11–748	13–302, 15–709.
11–748a	16–701, 16–703, 16–704, 16–706, 16–707, 16–708.
11–748b	16–703.
11–748c	16–703.
11–748d	16–703.
11–748e	15–710.
11–749	15–713.
11–751	11–901.
11–751a	11–101, 11–341, 11–703, 11–901, 11–902 to 11–908, 11–931 to 11–934, 11–961, 11–963, 11–981, 11–983, 11–984, 11–985, 11–1101, 1102, 11—1121, 11–1122, 11–1141, 11–1161, 11–1301 to 11–1303, 11–1321 to 11–1323, 11–1341 to 11–1343, 11–1503, 11–1586, 11–1701, 11–2306, 11–2311 to 11–2314, 13–101, 13–301, 13–302, 13–

TABLE 10.—REVISION OF PART II—Continued

Part II Former Sections	*Part II New Sections*
11–751a—Continued	702, 14–104, 15–101, 15–102, 15–131 to 15–133, 15–310, 15–318, 15–521, 15–522, 15–709 to 15–712, 15–714, 16–301, 16–501, 16–533, 16–578, 16–581, 16–701 to 16–707, 16–709, 16–710, 16–1501, 16–1505, 16–731, 16–3901, 16–3902, 16–3905, 16–3907, 16–3910.
11–752	11–901, 11–902.
11–753	11–902.
11–754	11–903, 11–904, 11–905, 11–906, 11–907, 11–908, 11–931, 11–932, 11–933, 11–934.
11–754a	11–983.
11–754b	11–935.
11–755	11–901, 11–961, 11–963, 11–983, 11–1101, 11–1301, 11–1302, 11–1303, 11–1321 to 11–1323, 11–1341 to 11–1343, 11–2301, 11–2306, 11–2309, 11–2310, 11–2311, 11–2312, 11–2313, 11–2314, 13–101, 13–301, 13–302, 13–702, 14–104, 15–132, 15–709, 15–711, 16–701, 16–702, 16–703, 16–704, 16–705, 16–706 16–707, 16–709, 16–3731.
11–755a	11–963.
11–755b	15–715.
11–755 note	Repealed.
11–755c	11–521(a)(2), 11–963.
11–755d	11–521(a)(2), 11–963.
11–756	11–962, 11–982, 11–1301, 11–1302, 11–1303, 11–1321, 11–1322, 11–1323, 11–1341, 11–1342, 11–1343, 13–101.
11–757	16–710.
11–758	11–1101.
11–759	Repealed. See 11–1101.
11–760	11–1102.
11–761	11–1121.
11–762	11–1141.
11–763	11–1161, 15–132.
11–764	11–1122.
11–765	13–301, 13–302.
11–766	13–101, 15–710.
11–767	11–741, 17–302, 17–305, 17–306, 17–307.
11–768	11–1103.
11–769	11–1141.
11–770	Repealed.
11–771	11–701, 11–702, 11–703, 11–704, 11–721, 11–722, 11–741, 11–762, 11–904.
11–771a	11–101, 11–321, 11–701 to 11–704, 11–721, 11–722, 11–741, 11–742, 11–761, 11–904, 11–1701, 11–2104, 13–101, 13–302, 17–101, 17–103, 17–301 to 17–307.
11–772	11–321, 11–741, 11–742, 17–101, 17–102, 17–103, 17–104, 17–301, 17–302, 17–303, 17–304, 17–305, 17–306, 17–307.
11–773	11–321, 17–101, 17–102, 17–103, 17–104.
11–774	11–761, 13–101, 13–302.
11–775	11–2104, 11–2105.
11–776	11–1701.
11–777	Repealed.
11–801	11–1301.
11–802	11–1321.
11–803	11–1302.
11–804	11–1341, 11–1342.
11–805	16–3902.
11–806	11–1322.
11–807	16–3903, 16–3909.
11–808	16–3906.
11–809	16–3904.
11–810	11–1343.
11–811	16–3907.
11–812	16–3908.
11–813	11–1323.
11–814	16–3901.
11–815	13–101.
11–816	11–1303.
11–817	Repealed. See 11–741, 17–301 et seq.
11–818	16–3905.
11–819	16–3910.
11–820	Repealed.
11–901	11–1501.
11–902	16–2316.
11–903	16–2316.
11–904	11–1501, 11–1582.
11–905	11–1504.
11–906	11–1551, 11–1553, 11–1554, 11–1583, 16–2301.
11–907	11–523, 11–1554, 11–1556, 11–1557.
11–908	16–2302.
11–909	16–2303.
11–910	16–2304.
11–911	16–2305.
11–912	16–2306.
11–913	11–1552.
11–914	11–1553.
11–915	16–2307, 16–2308.
11–916	16–2309.
11–917	16–2310.
11–918	16–2311.
11–919	11–1502, 11–1503.
11–920	16–2314.
11–921	11–1503.
11–922	11–1521, 11–1523, 11–1524, 11–1525.
11–923	11–1523.
11–924	11–1524.
11–925	11–1521, 11–1522.
11–926	16–2312.
11–927	16–2313.
11–928	11–1588.
11–929	11–1586.
11–930	11–1526, 13–101.
11–931	11–1584.
11–932	11–1583.
11–933	11–1581.
11–935	16–2384.
11–936	11–2301, 11–2306, 11–2311, 11–2312, 11–2313, 16–2382.
11–937	11–2306, 11–2309, 11–2310, 11–2312, 11–2314.
11–938	16–2315.
11–939	11–1585.
11–940	11–1587.
11–941	Repealed.
11–942	Repealed.
11–942–1	11–1589.
11–942a	16–2383.
11–951	11–1555, 11–1583, 16–2342.
11–952	16–2343.
11–953	16–2344.
11–954	16–2345.
11–955	16–2346.
11–956	16–2347.
11–957	16–2348.
11–958	16–2349.
11–959	16–2350.
11–960	16–2351.
11–961	11–523, 11–1556, 16–2355, 16–2381.
11–962	16–2352.
11–963	16–2353.
11–964	16–2354.
11–965	11–1586.
11–966	16–2356.

TABLE 10.—REVISION OF PART II—Continued

Part II Former Sections	*Part II New Sections*
11–967	Repealed.
11–1002	Repealed.
11–1104	Omitted. See 40 U.S.C. 19.
11–1201	Repealed. See 11–1901.
11–1202	Repealed. See 1–213, 1–213b.
11–1203	11–1902, 11–1905.
11–1204	11–1902.
11–1205	11–1903, 11–1904.
11–1206	11–1902.
11–1207	Repealed.
11–1208	Repealed.
11–1301	11–2101.
11–1302	11–2102.
11–1303	11–2103.
11–1304	11–2105.
11–1401	11–2303, 11–2304.
11–1402	11–2305.
11–1403	11–2305.
11–1404	11–2304.
11–1405	11–2312.
11–1406	Repealed.
11–1407	11–2306.
11–1408	11–2306.
11–1409	11–2307.
11–1410	11–2308.
11–1411	11–2304, 11–2306.
11–1412	11–2309.
11–1413	Repealed. See 28 U.S.C. 1866.
11–1416	Repealed.
11–1417	11–2301.
11–1418	11–2301, 11–2303.
11–1420	11–2302.
11–1421	Omitted. See 5 U.S.C. 6322.
11–1422	Omitted. See 5 U.S.C. 5537.
11–1423	Omitted. See 5 U.S.C. 5515.
11–1501	15–701.
11–1502	15–702.
11–1503	15–707.
11–1504	Omitted.
11–1505	15–708.
11–1506	15–703.
11–1507	15–704, 15–705.
11–1508	Omitted.
11–1509	15–704, 15–706.
11–1515	11–1906.
11–1516	15–702.
11–1517	Omitted. See 28 U.S.C. 1920.
11–1518	Omitted. See 28 U.S.C. 1920.
11–1519	15–705.
11–1520a	15–714.
11–1521	15–716.
11–1601 to 11–1624	Transf. to 30–301 to 30–324.
12–101	12–101.
12–102	12–102.
12–103	12–102.
12–104	12–102.
12–105	12–102.
12–106	12–103.
12–107	12–102.
12–108	12–102.
12–109	12–102.
12–110	12–102.
12–111	12–102.
12–112	12–104.
12–113	15–319.
12–114	12–102.
12–115	12–102.
12–116	12–102.
12–201	12–301, 12–302.
12–202	12–305.
12–203	13–307.
12–204	12–308.
12–205	12–303.
12–206	12–304.
12–207	12–306.
12–208	12–309.
12–301 to 12–306	Transf. to 28–3001 to 28–3006 (see Tables 12 and 13).*
12–401 to 12–403	Transf. to 28–3101 to 28–3103 (see table 13).
13–101	Repealed. See 28 U.S.C. 1691.
13–102	13–303.
13–103	13–334.
13–104	13–335.
13–105	13–332.
13–106	13–332.
13–107	13–333.
13–108	13–336, 13–337,
13–109	13–338.
13–110	13–389.
13–111	13–340.
13–112	13–340.
13–113	13–341.
13–201	Omitted.
13–202	Omitted.
13–203	Omitted.
13–204	Repealed.
13–205	15–106.
13–206	Omitted.
13–207	Omitted.
13–208	Repealed. See 13–101.
13–209	Repealed.
13–210	Omitted.
13–211	Repealed. See 13–101.
13–212	Omitted.
13–213	Repealed.
13–214	Repealed.
13–215	Repealed.
13–216	Repealed.
13–217	Repealed.
13–218	Omitted.
13–219	Omitted.
13–220	Omitted.
13–221	Repealed.
13–222	Repealed.
13–301	Repealed.
13–302	Repealed.
13–303	Repealed.
13–304	Omitted.
13–305	Omitted.
13–306	Omitted.
13–307	Omitted.
13–308	Omitted.
13–309	Omitted.
13–310	Omitted.
13–311	Omitted.
13–312	Omitted.
13–313	Omitted.
13–314	Omitted.
13–315	Omitted.
13–316	Omitted.
13–317	Omitted.
13–318	Omitted.
13–319	Omitted.
13–320	Omitted.
13–401	Repealed.
14–101	14–101.
14–102	14–101.
14–103	Repealed.
14–104	14–102.
14–201 to 14–203	Repealed.
14–204	14–103.
14–301	14–301.
14–302	14–302.
14–303	14–303.
14–304	14–304.
14–305	14–305.
14–306	14–306.
14–307	14–306.
14–308	14–307.
14–309	14–308.

*Section 28–3004 repealed as section "12–304" by Pub. L. 88–243, § 15(a)(13).

TABLE 10.—REVISION OF PART II—Continued

Part II Former Sections	*Part II New Sections*
14–310	14–309.
14–401	14–501.
14–402	14–502.
14–403	14–503.
14–404	14–504.
14–405	Repealed.
14–406	14–505.
14–407	14–506.
14–501	14–701.
14–502	14–702.
15–101	15–101.
15–102	15–101.
15–103	15–102.
15–104	Omitted.
15–105	Repealed.
15–106	Omitted.
15–107	15–103.
15–108	15–104.
15–109	15–105.
15–110	Repealed.
15–111	15–106.
15–201	15–302.
15–202	15–303.
15–203	15–304.
15–204	15–305.
15–205	15–306.
15–206	15–307.
15–207	15–308.
15–208	15–309.
15–209	15–310.
15–210	15–311.
15–211	15–312.
15–212	15–313.
15–213	15–323.
15–214	15–314.
15–215	15–315.
15–216	15–316.
15–217	15–317.
15–218	15–301, 16–541.
15–301	16–542.
15–302	15–543.
15–303	15–544.
15–304	16–545, 16–552.
15–305	16–546 to 16–548.
15–306	16–548, 16–549.
15–307	16–550.
15–308	16–551.
15–309	16–553.
15–310	16–554.
15–311	16–555.
15–312	16–556.
15–313	15–318.
15–314	16–572.
15–315	16–573.
15–316	16–574.
15–317	16–571, 15–575, 16–578.
15–318	16–577.
15–319	16–578, 16–579, 16–580.
15–320	16–581.
15–401	15–501.
15–402	15–502.
15–403	15–503.
16–101	16–101.
16–102 to 16–106	Repealed.
16–208	Repealed.
16–209	Repealed.
16–210	16–301.
16–211	16–302.
16–212	16–303.
16–213	16–304.
16–214	16–305.
16–215	16–306.
16–216	16–307.
16–217	16–308.
16–218	16–309.
16–219	16–310.
16–220	Repealed.
16–221	16–311.
16–222	16–312.
16–223	16–314.
16–224	16–313.
16–225	16–315.
16–301	16–501.
16–302	16–502.
16–303	16–521.
16–304	16–504.
16–305	16–505.
16–306	16–503.
16–307	16–506.
16–308	16–507.
16–309	16–508.
16–310	16–509.
16–311	16–510, 16–527.
16–312	16–511 to 16–513.
16–313	16–515, 16–516.
16–314	16–518.
16–315	16–519.
16–316	16–520.
16–317	16–522.
16–318	16–523.
16–319	16–524.
16–320	16–524.
16–321	16–517.
16–322	16–525.
16–323	16–526.
16–324	16–527.
16–325	16–528.
16–326	16–529.
16–327	16–529.
16–328	16–529.
16–329	16–529.
16–330	16–529.
16–331	16–530.
16–332	16–532.
16–333	16–514.
16–334	16–531.
16–335	16–533.
16–401	16–902.
16–402	16–903.
16–403	16–904.
16–404	16–905.
16–405	16–906.
16–406	16–907.
16–407	16–908.
16–408	16–909.
16–409	16–910.
16–410	16–911.
16–411	16–912.
16–412	16–913.
16–413	16–914.
16–414	16–915.
16–415	16–916.
16–416	Repealed. See 11–141, 13–101.
16–417	16–917.
16–418	16–918.
16–419	16–919.
16–420	16–922.
46–421	16–920.
16–422	16–921.
16–501	16–1101.
16–502	16–1102.
16–503	16–1103.
16–504	Repealed. See 13–101.
16–505	16–1104.
16–506	16–1105.
16–507	16–1106.
16–508	16–1107.
16–509	16–1108.
16–510	16–1101.
16–511	16–1109.
16–512	16–1110.
16–513	16–1111.
16–514	16–1112.
16–515	16–1113.
16–516	16–1114.
16–517	16–1114.
16–518	16–1115.
16–519	16–1116.

TABLE 10.—REVISION OF PART II—Continued

Part II Former Sections	*Part II New Sections*
16–520	16–1117.
16–521	16–1118.
16–522	16–1119.
16–523	16–1120.
16–524	16–1121.
16–525	16–1123.
16–526	16–1122.
16–527	16–1151 to 16–1153.
16–528	16–1154.
16–529	16–1155, 16–1156.
16–530	16–1157.
16–531	16–1158.
16–532	16–1124.
16–533	16–1124.
16–534	16–1124.
16–601	16–1301, 16–1311.
16–602	Repealed.
16–603	16–1312.
16–604	16–1313.
16–605	16–1314 to 16–1316.
16–606	16–1317.
16–607	16–1318.
16–608	16–1319.
16–609	16–1320.
16–610	16–1321.
16–611	Repealed.
16–612	16–1331.
16–613	16–1332 to 16–1334.
16–614	16–1335.
16–615	16–1301, 16–1336.
16–616	16–1301, 16–1337.
16–617	16–1338.
16–618	Repealed.
16–619	16–1301, 16–1351, 16–1352.
16–620	Repealed. See 16–1314.
16–621	Repealed.
16–622	Repealed.
16–623	Repealed.
16–624	Repealed.
16–625	Repealed.
16–626	Repealed.
16–627	Repealed.
16–628	16–1353 to 16–1355.
16–629	16–1356, 16–1357.
16–630	16–1358.
16–631	16–1359.
16–632	16–1360.
16–633	16–1361.
16–634	16–1362.
16–635	Repealed.
16–636	16–1363.
16–637	16–1364.
16–638	16–1365.
16–639	16–1366.
16–640	16–1367.
16–641	Repealed.
16–642	16–1368.
16–643	Repealed.
16–644	Repealed.
16–701	16–1701.
16–702	16–1702.
16–703	16–1703.
16–704	16–1704.
16–705	Transf. to 22–508.
16–706	Omitted. See 16–1701–4.
16–707	Omitted. See 16–1701–4.
16–801	16–1901.
16–802	16–1902.
16–803	16–1903.
16–804	16–1904.
16–805	16–1905.
16–806	16–1906.
16–807	16–1907.
16–808	16–1908.
16–901	16–2101.
16–902	16–2102.
16–903	16–2103.
16–904	16–2104.
16–905	16–2105.
16–906	16–2106.
16–1001 to 16–1010	Repealed.
16–1101	16–2501.
16–1102	16–2502.
16–1103	16–2503.
16–1201	16–2701.
16–1202	16–2702.
16–1203	16–2703.
16–1301	16–2901.
16–1302	16–2921.
16–1303	16–2922.
16–1304	16–2923.
16–1305	16–2924.
16–1306	16–2925.
16–1401, 16–1402	Repealed.
16–1501	16–3301.
16–1601	16–3501.
16–1602	16–3502.
16–1603	16–3503.
16–1604	16–3504.
16–1605	16–3505.
16–1606	16–3506.
16–1607	16–3507.
16–1608	16–3508.
16–1609	16–3509.
16–1610	16–3510.
16–1611	16–3511.
16–1701 to 16–1719	Repealed.
16–1801	16–3701.
16–1802	16–3702.
16–1803	16–3703.
16–1804	16–3704.
16–1805	16–3705.
16–1806	16–3706.
16–1807	16–3707.
16–1808	16–3708.
16–1809	Repealed. See 13–101.
16–1810	16–3709.
16–1811	16–3710.
16–1812	16–3711.
16–1813	16–3712.
16–1814	16–3713.
16–1901	Repealed.
16–1902	Repealed.
16–1903	13–501.
16–1904	13–502.
16–1905	Repealed.
16–1906	13–503.
16–1907	13–504.
16–1908	13–505.
16–1909	15–107.
16–2001	16–4101.
16–2002	16–4102.
16–2003 to 16–2005	Omitted.
19–401	11–504.
19–402	11–504.
19–403	11–505, 11–506.
19–404a	11–505.
19–406	11–505.
19–407	11–505.
19–408	11–505.
19–409	11–504.
19–410	11–505.
19–411	11–505.
23–103	11–963.
24–102	16–710.
24–401	11–963.

TABLE 11.—REVISION OF PART III

Showing disposition of sections of former Part III, Titles 18–21, inclusive, and a few sections of other titles, of the D.C. Code, as the result of the revision and reenactment of Part III by Act September 14, 1965, Public Law 89–183, 79 Stat. 685, effective January 1, 1966

Part III Former Sections	*Part III New Sections*
18–101	19–301.
18–102	19–317.
18–103 to 18–105	Previously repealed.
18–106	19–318.
18–107	Previously repealed.
18–108	19–319.
18–109	19–320.
18–110	19–321.
18–111	Previously repealed.
18–201	19–102.
18–201a	19–102.
18–202	19–102.
18–203	19–103.
18–204	19–104.
18–205	19–106.
18–206	19–105.
18–207	19–107, 19–108, 19–109.
18–208	19–110.
18–209	19–111.
18–210	19–112.
18–211	19–113.
18–212	19–114.
18–213 to 18–215	Previously repealed.
18–215a	19–102.
18–301	20–901.
18–302	20–902.
18–303	20–903.
18–304	20–904.
18–305	20–905.
18–401	20–701.
18–402	20–702.
18–403	20–703.
18–404	20–704.
18–405	20–705.
18–406	20–706.
18–407	20–707.
18–408	20–708.
18–501	20–1329.
18–502	20–1326.
18–503	20–1301.
18–504	20–1302.
18–505	20–1303.
18–506	20–1304.
18–507	20–1305.
18–508	20–1306.
18–509	20–1307.
18–510	20–1308.
18–511	20–1309.
18–512	20–1317.
18–513	20–1323.
18–514	20–1324.
18–515	20–1310.
18–516	20–1311.
18–517	20–1312.
18–518	20–1318.
18–519	20–1313.
18–520	20–1325.
18–521	20–1327.
18–522	20–1314.
18–523	20–1315.
18–524	20–1316.
18–525	20–1319.
18–526	20–1320.
18–527	20–1321.
18–528	20–1322.
18–529	20–1322.
18–530	20–1328.
18–601	20–1101.
18–602	20–1102.
18–603	20–1102.
18–604	20–1103.
18–605	20–1104.
18–606	20–1105.
18–607	20–1106.
18–608	20–1107.
18–609	20–1108.
18–610	20–1109.
18–611	20–1109.
18–612	20–1111.
18–701	20–1901.
18–702	19–302.
18–703	19–303.
18–704	19–304.
18–705	19–305.
18–706	19–306.
18–707	19–307, 19–319.
18–708	19–308.
18–709	19–309.
18–710	19–310.
18–711	19–311.
18–712	19–312.
18–713	19–313.
18–714	19–314.
18–715	19–315.
18–716	19–316.
18–717	19–701.
18–718	20–1902.
18–719	20–1903.
18–720	20–1904.
18–721	20–1905.
18–722	20–1906.
18–723	20–1907.
18–801	19–101.
18–802	20–2101.
18–803	20–2102.
18–804	20–2103.
18–805	20–2104.
18–806	20–2105.
18–807	20–2106.
18–808	19–101, 20–2107.
18–809	19–101, 20–2108.
18–810	19–101, 20–2108.
18–901	19–506.
18–902	19–501.
18–903	19–502.
18–904	19–503.
18–905	19–504.
18–906	19–505.
18–907	19–506.
18–908	Repealed.
18–909	19–506.
18–910	Repealed.
19–101	18–102.
19–102	18–107.
19–103	18–103, 18–109.
19–104	18–104.
19–105	18–105.
19–106	18–106.
19–107	18–108.
19–108	18–109.
19–109	18–307.
19–110	18–308.
19–111	18–110.
19–201	18–301.
19–202	18–302.
19–203	18–303.
19–204	18–304.
19–205	18–305.
19–206	18–306.
19–301	18–501, 18–502, 18–503.
19–302	18–506.
19–303	18–511.
19–304	18–504.
19–305	18–504.
19–306	18–505.
19–307	18–508.
19–308	18–507.
19–309	18–509.

TABLE 11.—REVISION OF PART III—Continued

Part III Former Sections	*Part III New Sections*
19–310	18–510.
19–311	18–512.
19–312	18–513.
19–313	18–514.
19–401 to 19–411	11–504 to 11–506.
20–101	20–351.
20–102	20–352.
20–103	20–338.
20–104	20–353.
20–105	20–339.
20–106	20–354, 20–355.
20–107	20–356, 20–505.
20–108	20–357.
20–109	20–358.
20–110	20–359.
20–111	20–359.
20–112	20–361.
20–113	20–360.
20–114	20–361.
20–115	20–362.
20–216	20–363.
20–117	20–364.
20–118	20–365, 20–503, 21–110.
20–119	20–366.
20–201	20–331.
20–202	20–332.
20–203	20–333.
20–204	20–334.
20–205	20–334.
20–206	20–334.
20–207	20–334.
20–208	20–334.
20–209	20–334.
20–210	20–334.
20–211	20–334.
20–212	20–334.
20–213	20–334.
20–214	20–334.
20–215	20–334.
20–216	20–334.
20–217	20–335.
20–218	20–336.
20–219	20–337.
20–301	20–301, 20–302.
20–302	20–303.
20–303	20–304.
20–304	20–305.
20–305	20–306.
20–306	20–307.
20–307	20–308.
20–308	20–309.
20–309	20–310.
20–310	20–311.
20–311	20–312.
20–312	20–313.
20–401	20–501.
20–402	20–502.
20–403	20–504.
20–404	20–506.
20–405	20–507.
20–501	20–1501.
20–502	20–1502.
20–503	20–1503.
20–504	20–1504.
20–505	20–1505.
20–506	20–1506.
20–601	20–1701.
20–602	20–1702.
20–603	20–1703.
20–604	20–1704.
20–605	20–1705.
20–606	20–1706.
20–607	20–1707.
20–608	20–1708.
20–609	20–1709.
20–610	20–1710.
20–701	20–2301.
20–702	20–2302.
20–703	20–2303.
20–704	20–2304.
20–705	20–2305.
20–706	20–2306.
20–707	20–2307.
20–708	20–2308.
20–709	20–2309.
20–710	20–2310.
20–711	20–2311.
20–712	20–2312.
20–713	20–2313.
20–714	20–2314.
20–715	20–2315.
21–101	21–101.
21–102	21–102.
21–103	21–103.
21–104	21–181.
21–105	21–182.
21–106	21–114.
21–107	21–113.
21–108	21–101, 21–105.
21–109	Repealed. See 21–103, 21–105.
21–110	21–106.
21–111	21–108.
21–112	21–107.
21–113	Repealed. See 21–108.
21–114	21–109.
21–115	21–111, 21–705.
21–116	21–112, 21–706.
21–117	Omitted.
21–118	21–110, 21–115.
21–119	21–115.
21–120	21–116.
21–121	21–117.
21–121a	21–120.
21–122	21–118.
21–123	21–118.
21–124	21–141.
21–125	21–142.
21–126	21–143.
21–127	21–119.
21–128	21–148.
21–129	21–104.
21–130	21–158.
21–201	21–147.
21–202	21–144, 21–702.
21–203	21–145, 21–703.
21–204	21–148.
21–205	21–149.
21–206	21–150.
21–207	21–151.
21–208	21–152.
21–209	21–153.
21–210	21–155.
21–211	21–156.
21–212	21–157.
21–213	21–146, 21–704.
21–214 to 21–224	Repealed. See 21–301 to 21–309.
21–225	21–301.
21–226	21–302.
21–227	21–303.
21–228	21–304.
21–229	21–305.
21–230	21–307.
21–231	21–308.
21–232	21–306.
21–233	21–309.
21–234	Repealed.
21–301 to 21–305	Previously repealed.
21–306	21–581.
21–307	21–581.
21–308	Previously repealed.
21–309	Repealed.
21–310 to 21–333	Previously repealed.
21–351	21–501.
21–352	21–502, 21–503.
21–353	21–511, 21–512, 21–526.
21–354	21–513, 21–514.
21–355	21–521 to 21–528, 21–583.

TABLE 11.—REVISION OF PART III—Continued

Part III Former Sections	*Part III New Sections*	*Part III Former Sections*	*Part III New Sections*
21–356	21–541 to 21–545, 21–582, 21–586.	21–614 (form. 28–2314)	21–1712.
21–357	21–546 to 21–549.	22–1403	18–111, 18–112.
21–358	21–561 to 21–565.	32–330	21–590.
21–359	21–587.	32–417	21–902.
21–360	21–591.	32–417a	21–903.
21–361	21–551.	32–417b	21–904.
21–362	21–584.	32–417c	21–905.
21–363	21–585.	32–417d	21–906.
21–364	21–588.	32–417e	21–907.
21–365	21–550.	32–417f	21–908.
21–336	21–589.	32–417g	21–909.
21–401	21–1301 to 21–1304.	32–607	21–1102.
21–501	21–1501.	32–608	21–1103.
21–502	21–1502.	32–609	21–1104.
21–503	21–1503.	32–610	21–1105.
21–504	21–1504.	32–611	21–1106.
21–505	21–1505.	32–612	21–1107.
21–506	21–1506.	32–613	21–1108.
21–507	21–1507.	32–614	21–1109.
21–601 (form. 28–2301)	21–1701.	32–615	21–1110.
21–602 (form. 28–2302)	21–1702.	32–616	21–1111.
21–603 (form. 28–2303)	Previously repealed.	32–617	21–1112.
21–604 (form. 28–2304)	21–1703.	32–618	21–1113.
21–605 (form. 28–2305)	21–1704.	32–619	21–1123.
21–606 (form. 28–2306)	21–1705.	32–620	21–1114.
21–607 (form. 28–2307)	21–1706.	32–621	21–1115.
21–608 (form. 28–2308)	21–1707.	32–622	21–1116.
21–609 (form. 28–2309)	21–1708.	32–623	21–1117.
21–610 (form. 28–2310)	21–1709.	32–624	21–1118.
21–611 (form. 28–2311)	21–1710.	32–625	21–1119.
21–612 (form. 28–2312)	21–1711.	32–626	21–1120.
21–613 (form. 28–2313)	Repealed.	32–627	21–1121.
		32–628	21–1122.

TABLE 12.—UNIFORM COMMERCIAL CODE

(Title 28, Subtitle I)

Showing where subject matter dealt with in certain former sections of Title 28 and other titles of the D.C. Code will be found in Subtitle I (Uniform Commercial Code) of Title 28, enacted by Public Law 88–243, effective January 1, 1965, or, in a few cases, in other sections to which the subject matter was transferred (see also Table 13)

Former Sections	*Uniform Commercial Code*	*Former Sections*	*Uniform Commercial Code*
22–1406	22–1209. See also, 28:9–102, 28:9–103.	28–303	28:3–202.
28–101	28:3–102.	28–304	28:3–204.
28–102	28:3–104, 28:3–107, 28:3–108.	28–305	28:3–204.
28–103	28:3–106.	28–306	28:3–204.
28–104	28:3–105.	28–307	28:3–205.
28–105	28:3–109.	28–308	28:3–206.
28–106	28:3–112.	28–309	28:3–202.
28–107	28:3–112, 28:3–113.	28–310	28:3–205.
28–108	28:3–108.	28–311	28:3–204.
28–109	28:3–110.	28–312	28:3–102, 28:3–116.
28–110	28:3–111.	28–313	28:3–117.
28–111	28:3–112.	28–314	28:3–203.
28–112	28:3–114.	28–315	28:3–205.
28–113	28:3–114.	28–316	28:3–202.
28–114	28:3–115.	28–317	28:1–105.
28–115	28:3–115.	28–318	28:3–206.
28–116	28:3–115.	28–319	28:3–208.
28–117	28:3–202.	28–320	28:3–201.
28–118	28:3–118.	28–321	28:3–208.
28–119	28:3–401.	28–401	28:3–301.
28–120	28:3–403.	28–402	28:3–302.
28–121	28:3–403.	28–403	28:3–302.
28–122	28:3–403.	28–404	28:3–304.
28–123	28:3–204, 5, 6.	28–405	28:3–304.
28–124	28:3–401, 28:3–404.	28–406	28:3–304.
28–201	28:3–408.	28–407	28:3–305.
28–202	28:3–303.	28–408	28:3–306.
28–203	28:3–303.	28–409	28:3–307.
28–204	28:3–303.	28–410	28:3–804.
28–205	28:3–408.	28–501	28:3–413.
28–206	28:3–415.	28–502	28:3–413.
28–301	28:3–202.	28–503	28:3–410, 28:3–413.
28–302	28:3–202.	28–504	28:3–414.

TABLE 12.—UNIFORM COMMERCIAL CODE—Continued

Former Sections	*Uniform Commercial Code*
28–505	28:3–414.
28–506	28:3–417.
28–507	28:3–417.
28–508	28:3–414.
28–509	28:3–414.
28–510	28:3–403.
28–601	28:3–501.
28–602	28:3–503.
28–603	28:3–504.
28–604	28:3–504.
28–605	28:3–501, 28:3–504.
28–606	28:3–504.
28–607	28:3–511.
28–608	28:3–504.
28–609	28:3–504.
28–610	28:3–511.
28–611	28:3–501.
28–612	28:3–511.
28–613	28:3–511.
28–614	28:3–507.
28–615	28:3–507.
28–616, first three sentences.	28:3–503.
28–617	28:3–506.
28–618	28:3–504.
28–619	28:3–418.
28–701	28:3–501, 28:3–502.
28–702	28:3–508.
28–703	28:3–508.
28–704	28:3–508.
28–705	28:3–508.
28–706	28:3–508.
28–707	28:3–508.
28–708	28:3–508.
28–709	28:3–508.
28–710	28:3–508.
28–711	28:3–508.
28–712	28:3–508.
28–713	28:3–508.
28–714	28:3–508.
28–714a	28:3–508, 28:4–103. 28:4–104, 28:4–106. 28:4–107, 28:4–301. 28:4–302, 28:4–402.
28–715	28:3–508.
28–716	28:3–508.
28–717	28:3–508.
28–718	28:3–508.
28–719	28:3–508.
28–720	28:3–508.
28–721	28:3–511.
28–722	28:3–511.
28–723	28:3–511.
28–724	28:3–511.
28–725	28:3–511.
28–726	28:3–508, 28:3–511.
28–727	28:3–508, 28:3–511.
28–728	28:3–501, 28:3–508, 28:3–511.
28–729	28:3–501, 28:3–508, 28:3–511.
28–730	28:3–501, 28:3–509, 28:3–510.
28–801	28:3–601 to 28:3–606.
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28–1224	28:7–602.
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28–1302	28:2–301.
28–1303	28:2–308, 28:2–309.
28–1304	28:2–601, 28:2–602.
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28–1306	28:2–501, 28:2–504, 28:2–509.
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28–1308	28:2–606.
28–1309	28:2–607.
28–1310	28:2–602.
28–1311	28:2–703.
28–1401	28:2–103, 28:2–703.
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28–1403	28:2–702, 28:2–703, 28:9–113.
28–1404	28:2–401.
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28–1406	28:2–705.
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28–1907	28:7–601.
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28–1911	28:7–603.
28–1912	28:7–503.
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28–1914	28:7–204.
28–1915	28:7–207.
28–1916	28:7–207.
28–1917	28:7–207.
28–1918	28:7–403.
28–1919	28:7–602.
28–1920	28:7–602.
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28–1922	28:7–210.
28–1923	28:7–209.
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28–1929	28:7–210.
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28–2001	28:7–501.
28–2002	28:7–501.
28–2003	28:7–501.
28–2004	28:7–201.
28–2005	28:7–502.
28–2006	28:7–504.
28–2007	28:7–506.
28–2008	28:7–507.
28–2009	28:7–505.
28–2010	28:7–507.
28–2011	28:7–402, 28:7–404, 28:7–501.
28–2012	28:7–503.
28–2013	28:7–403, 28:7–503, 28:7–504.
28–2101 to 28–2106	Transf. to 22–3701 to 22–3706.
28–2201	28:1–103.
28–2202	28:1–102.
28–2203	28:2–103, 28:7–102.
28–2901	28:8–301, 28:8–313.
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28–2921	28:8–302.
28–2922	28:8–102.
28–3004 (form. 12–304)	28:1–206, 28:2–201, 28:8–319.
42–101	28:9–301, et seq., 28:9–401.
42–103	28:9–301, et seq., 28:9–401.
42–105	28:9–301, et seq., 28:9–401.

TABLE 13.—TITLE 28, SUBTITLE II

Showing disposition of certain former sections of Title 28, D.C. Code, repealed or otherwise disposed of as the result of the revision and reenactment as Subtitle II of such title, by Act August 30, 1964, Public Law 88–509, 78 Stat. 667, effective January 1, 1965, of that part of Title 28 not affected by the enactment of the Uniform Commercial Code (see Table 12)

Title 28, Former Sections	*Revised Title 28, Subtitle II, or other title*
28–616*	28–2701.
28–2101 to 28–2106	22–3701 to 22–3706.
28–2301, 28–2302	Transf. to 21–601, 21–602 (now 21–1701, 21–1702).
28–2303	Previously repealed. See 21–603, Table 11.
28–2304 to 28–2312	Transf. to 21–604 to 21–612 (now 21–1703 to 21–1711).
28–2313	Transf. to 21–613 Rep.
28–2314	Transf. to 21–614 (now 21–1712).
28–2321	28–2901.
28–2322	28–2902.
28–2323	28–2903.
28–2324	28–2904.
28–2325	28–2905.
28–2326	28–2906.
28–2327	28–2907.
28–2328	28–2908.
28–2329	28–2909.
28–2330	Omitted.
28–2401	28–2501.
28–2402	28–2501.
28–2403	16–601.
28–2404	15–111.
28–2405	28–2502.
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28–2503	28–2303.
28–2504	28–2304.
28–2505	28–2305.
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28–2603	28–2103.
	28–2104.
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28–2607	28–2108.
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28–2702	28–3301.
28–2703	28–3303.
28–2704	28–3304.
28–2705	28–3305.
28–2706	28–3306.
28–2707	15–108.
28–2708	15–109.
28–2709	15–110.
28–2801	Omitted.
28–2802	Omitted.
28–2803	Omitted.
28–2804	28–2711.
28–3001 (form. 12–301)	28–3501.
28–3002 (form. 12–302)	28–3502.
28–3003 (form. 12–303)	28–3503.
28–3004 (form. 12–304)	See Table 12.
28–3005 (form. 12–305)	28–3504.
28–3006 (form. 12–306)	28–3505.
28–3101 (form. 12–401)	28–3101.
28–3102 (form. 12–402)	28–3102.
28–3103 (form. 12–403)	28–3103.

*That part not repealed by Pub. L. 88–243. See Table 12.

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ZOOLOGICAL PARK
See NATIONAL ZOOLOGICAL PARK